

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN REGION
STATE OF WASHINGTON

SOUTH SOUND BIRD ALLIANCE,
GORDON WHITE, ROBERT METZGER,
and FUTUREWISE,

Petitioners,

v.

THURSTON COUNTY,

Respondent,

and

BLACK LAKE QUARRY LLC,

Intervenor
Respondent.

CASE No. 26-2-0013c

FINAL DECISION AND ORDER

SYNOPSIS

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

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

1 Management Act (GMA). Futurewise also alleges that the County failed to amend its
2 development regulations as a part of the update to require permit-exempt wells to comply
3 with the GMA and RCW 90.44.050. SSBA challenges amendments to the future land use
4 map and the official zoning map, redesignating and rezoning approximately 270 acres of
5 land zoned Rural Residential- 20 acre (R 1/20) to Rural Resource Industrial (RRI) and
6 requests that the Board make a determination of invalidity.
7

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

15 Turning to SSBA's challenge, the Board concludes that the County's adoption of
16 the Black Lake Quarry (BLQ) rezone and future land use map amendments was clearly
17 erroneous because the action was inconsistent with other provisions of the comprehensive
18 plan. The Board also determines that the adoption of the BLQ rezone and future land use
19 map amendments substantially interferes with fulfillment of the goals of the GMA. The
20 Board therefore issues a determination of invalidity with respect to the rezone and future
21 land use map amendments.
22

23 I. INTRODUCTION

24 The County conducted its ten-year comprehensive plan update pursuant to
25 RCW 36.70A.130 and adopted the amendments to the comprehensive plan and
26 development regulations on December 16, 2025. The Legislature intended for the update
27 process to include an assessment of whether a comprehensive plan complies with recent
28 amendments to the GMA and for analysis of changes in land use or population.¹ If a local
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31 _____
32 ¹ RCW 36.70A.070(10); *Thurston County. V. Western Wash. Growth Mgmt. Hearings Bd.*, 164
Wn.2d 329, 344, 190 P.3d 38 (2008).

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

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

A. Futurewise Petition.

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

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

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

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

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

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

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

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

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

27 ³ RCW 36.70A.070(9)(b).

28 ⁴ Futurewise Brief at 2-3. Futurewise's Prehearing Brief will be cited as "Futurewise Brief" and its
29 reply brief will be cited as "Futurewise Reply Brief."

30 ⁵ *Id.* at 4-18.

31 ⁶ *Id.* at 18-31.

32 ⁷ See, e.g., *id.* at 15 ("The allowance of rural area accessory dwelling units matter because the
transport-related direct emissions of rural residents are three times those of inner city residents and
1.5 times those of suburban residents.")

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

3 RCW 36.70A.590 was enacted in 2018⁸ in legislation designed to ensure that
4 water is available to support development. RCW 36.70A.590 states:

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

11 Futurewise alleges that the GMA broadly requires protection of surface water and
12 groundwater resources.⁹ Further, Futurewise alleges that RCW 36.70A.590 requires the
13 adoption of development regulations that limit any withdrawal of public groundwaters by a
14 permit-exempt well to no more than 5,000 gallons per day pursuant to RCW 90.44.050.¹⁰
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16 **B. South Sound Bird Alliance, Gordon White, and Robert Metzger (SSBA)**
17 **Petition.**
18

19 SSBA challenges an official zoning map and future land use map amendments
20 enacted as part of the County's periodic update known as the Black Lake Quarry (BLQ)
21 Amendments. The BLQ Amendments redesignated and rezoned 270 acres of land from
22 Rural-20 (R 1/20) District to Rural Resource Industrial (RRI) District.¹¹ SSBA contends this
23 rezone amendment conflicts with a number of comprehensive plan policies and provisions
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26 ⁸ See Laws of 2018, ch. 1, § 102 (enacting ESSB 6091, 65th Leg. Reg. Sess.).

27 ⁹ Futurewise Prehearing Brief at 31-32; see RCW 36.70A.070(1) (The land use element shall provide
28 for the protection of the quality and quantity of groundwater used for public water supplies."); RCW
29 36.70A.070(5)(c)(iv) ("The rural element shall include measures that apply to rural development and
protect the rural character of the area, as established by the county, by: . . . protecting surface and
groundwater resources.").

30 ¹⁰ Futurewise Brief at 31-33.

31 ¹¹ SSBA Brief at 1. SSBA's Prehearing Brief will be cited as "SSBA Brief" and its reply brief will be
32 cited as "SSBA Reply Brief." The redesignation and rezone will be referred to collectively as the
"rezone" or "rezone amendment."

1 of the GMA.¹² Specifically, SSBA argues that the Thurston County Board of County
2 Commissioners failed to consider the comprehensive plan's policies establishing decision
3 criteria for rezones. In addition, SSBA alleges that the land being rezoned is
4 environmentally constrained, in that it contains Category 1 and 2 Critical Aquifer Recharge
5 Areas (CARAs), is adjacent to the Black River Corridor which contains threatened salmon
6 species and Oregon spotted frog habitat, and borders the Black River Unit of the Billy
7 Frank, Jr. Nisqually National Wildlife Refuge.¹³ SSBA also alleges that the rezone was
8 approved based on the following false assumptions: 1) there is a scarcity of RRI-zoned
9 land in the County; 2) the rezone would prevent the existing Black Lake Quarry (BLQ)
10 mine from conducting below-water-table mining; 3) the rezone would require BLQ to
11 conduct reclamation; and 4) the rezone would set aside 24 acres of land for habitat
12 conservation.¹⁴ SSBA also requests that the Board enter a determination of invalidity
13 pursuant to RCW 36.70A.302, alleging that the continued validity of the BLQ amendments
14 substantially interferes with the fulfillment of the goals of the GMA in RCW 36.70A.020(2),
15 (3), (9), and (10).
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18 **II. BOARD JURISDICTION**

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20 The Board finds that both Petitions for Review were timely filed, pursuant to RCW
21 36.70A.290(2). The Board finds both Petitioners have standing to appear before the Board
22 pursuant to RCW 36.70A.280(2)(b). The Board also finds it has jurisdiction over the subject
23 matter of the petitions pursuant to RCW 36.70A.280(1).
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25 **III. STANDARD OF REVIEW**

26 Comprehensive plans and development regulations, and amendments to them, are
27 presumed valid upon adoption.¹⁵ This presumption creates a high threshold for
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30 ¹² *Id.* at 1.

31 ¹³ *Id.* at 3-7.

32 ¹⁴ *Id.* at 23-29.

¹⁵ RCW 36.70A.320(1).

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

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

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

14 IV. ANALYSIS AND DISCUSSION

15 A. Futurewise Petition For Review Issues.

16 **Issue No. 1. Did Thurston County's adoption of Resolution No. 16574 and Ordinance**
17 **No. 16575 violate RCW 36.70A.020 and (14); RCW 36.70A.070; RCW 36.70A.070(5);**
18 **RCW 36.70A.070(9); RCW 36.70A.095; RCW 36.70A.100; RCW 36.70A.120; RCW**
19 **36.70A.130(1)(a), (1)(e), and (5)(b); RCW 36.70A.190; RCW 36.70A.210; RCW**
20 **36.70A.290(2); WAC 365-196-443; and Thurston County Countywide Planning**
21 **Policies 3.1, e., f, and g. because the comprehensive plan's Chapter Two Climate,**
22 **Chapter Three Land Use, and Chapter Eight Transportation and the amended**
23 **development regulations fail to identify the actions the jurisdiction will take during**
24 **the planning cycle to reduce overall greenhouse gas emissions, do not comply with**
the greenhouse gas emissions reduction subelement requirements, the climate

25 ¹⁶ RCW 36.70A.320(2).

26 ¹⁷ RCW 36.70A.280; RCW 36.70A.302.

27 ¹⁸ RCW 36.70A.290(1).

28 ¹⁹ RCW 36.70A.320(3). To find a county's action clearly erroneous, the Board must be "left with the firm
and definite conviction that a mistake has been committed." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179,
201, 849 P.2d 646 (1993).

29 ²⁰ *Futurewise v. Snohomish County*, 9 Wn.App. 391, 404, 444 P.3d 1228 (2019)("[T]he Board has
30 also explained that a party's inadequately briefed issues are treated the same as unbriefed issues
31 when the briefing provides 'insufficient supporting facts and legal arguments' to satisfy the party's
32 burden of proof.")(Citations omitted).

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

3 As briefed by Futurewise, Issue 1 examines the requirements of RCW
4 36.70A.070(9)(d)(i), which states:

5 The greenhouse gas emissions reduction subelement of the
6 comprehensive plan, and its related development regulations, must
7 identify the actions the jurisdiction will take during the planning cycle
8 consistent with the guidelines published by the department pursuant to
9 RCW 70A.45.120 that will:

10 (A) Result in reductions in overall greenhouse gas emissions
11 generated by transportation and land use within the jurisdiction but
12 without increasing greenhouse gas emissions elsewhere in the
13 state;

14 (B) Result in reductions in per capita vehicle miles traveled within
15 the jurisdiction but without increasing greenhouse gas emissions
16 elsewhere in the state; and

17 (C) Prioritize reductions that benefit overburdened communities in
18 order to maximize the cobenefits of reduced air pollution and
19 environmental justice.

20 (ii) Actions not specifically identified in the guidelines developed by the
21 department pursuant to RCW 70A.45.120 may be considered consistent
22 with these guidelines only if:

23 (A) They are projected to achieve greenhouse gas emissions
24 reductions or per capita vehicle miles traveled reductions
25 equivalent to what would be required of the jurisdiction under the
26 guidelines adopted by the department; and

27 (B) They are supported by scientifically credible projections and
28 scenarios that indicate their adoption is likely to result in reductions
29 of greenhouse gas emissions or per capita vehicle miles traveled.

30 (iii) A jurisdiction may not restrict population growth or limit population
31 allocation in order to achieve the requirements set forth in this subsection
32 (9)(d).

1 Some further background information is necessary to understand the context of
2 Futurewise's challenge. As part of HB 1181, the Legislature required the Washington State
3 Department of Commerce (Commerce) to publish "guidelines that specify a set of
4 measures counties and cities may implement" via their comprehensive plans and
5 development regulations to reduce greenhouse gas emissions (GHG).²¹ The law requires
6 that the guidelines must be based on the most recent GHG report prepared by the
7 Departments of Ecology and Commerce pursuant to RCW 70A.45.020(2).²² Commerce
8 also provided services to certain counties, including Thurston, that are required to adopt a
9 GHG emissions reduction subelement, including producing a GHG inventory and draft
10 goals and policies.²³ For The County, Commerce issued a report entitled "Thurston County
11 2022 Greenhouse Gas Emissions Analysis."²⁴ These two different sources of guidance are
12 relevant to this case, and will be described in separate subsections below.
13

14 (i) *Department of Commerce, Thurston County 2022 Greenhouse Gas*
15 *Emissions Analysis (LAS)*
16

17 The County is one of eleven counties in the State of Washington that is required to
18 develop and adopt a greenhouse gas emissions reduction subelement as part of its new
19 climate change element.²⁵ To accomplish this, the County entered into an interagency
20 agreement with Commerce, which provided grant funding and services to aid the County
21 in development and adoption of its GHG emissions reduction subelement.²⁶ As part of this
22 contract work, Commerce published the "Thurston County 2022 Greenhouse Gas
23 Emissions Analysis" or "Local Action Scenario,"²⁷ which provides an inventory report of
24 Thurston County's total emissions (including direct and indirect emissions from industry,
25 agriculture and other sectors); and its "core" emissions, which includes "sectors over which
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28 ²¹ RCW 70A.45.120(1).

29 ²² *Id.*

30 ²³ *IR-I, REC-028*, Bates No. 00093-110.

31 ²⁴ *IR-I, REC-028*, Bates No. 00750.

32 ²⁵ RCW 36.70A.095; *see IR-I, REC-028*, Bates No. 00750.

²⁶ *IR-I, REC-028*, Bates No. 00093-00110.

²⁷ *IR-I, REC-028*, Bates No. 00747 (LAS).

1 the county governments often have the most influence through local policy mechanisms
2 such as local codes/regulations . . . ”²⁸ This document will be referred to as “the LAS” in
3 this decision.

4 The LAS provides a detailed discussion of the County’s greenhouse gas (GHG)
5 emissions profile and includes forecasts of GHG emissions based on three different
6 scenarios:
7

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

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

12 (3) Additional Local Action, which models estimated emissions reduction from local
13 strategies such as Vehicle Miles Traveled (VMT) reduction and building energy
14 efficiency.²⁹
15

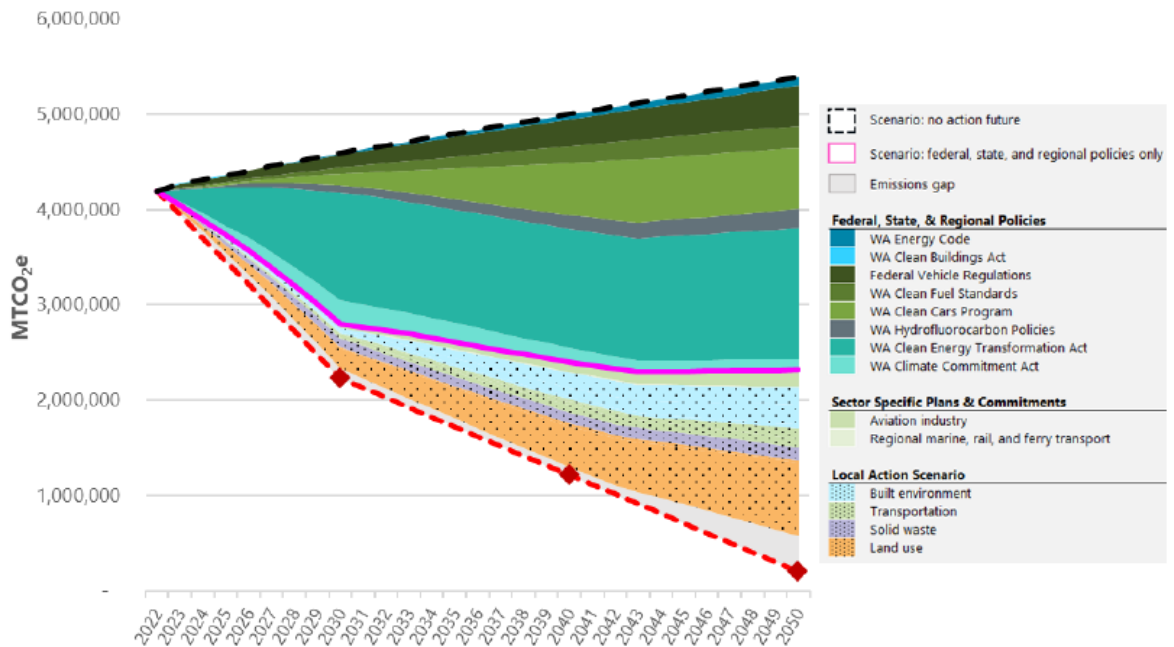
16 The LAS provides the following graphic to indicate the needs for emission
17 reductions to meet the Washington State GHG emission reduction targets (45% by 2030,
18 70% by 2040, and 95% by 2050), with all reductions below the bright pink line representing
19 potential emissions reductions that could be contributed by the local government:³⁰
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31 ²⁸ *Id.*, Bates No. 00750.

32 ²⁹ *Id.*, Bates No. 00771.

³⁰ *Id.*, Bates No. 00772.

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



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

Findings Summary

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

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

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

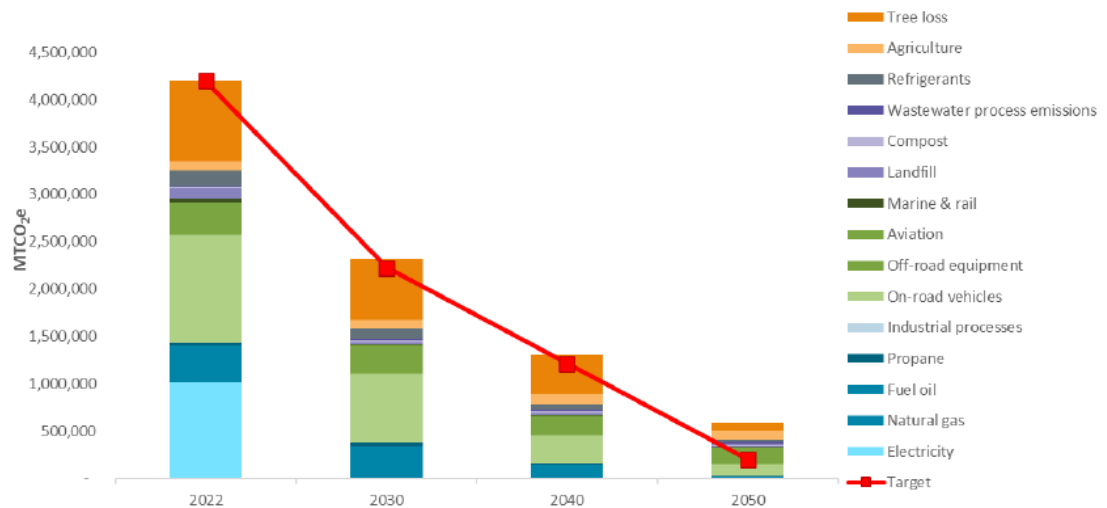
Emission levels for 1990 were estimated based on state-level emissions trends between 1990 and 2022.

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

³² *IR-I, REC-028*, Bates No. 00771.

1 The LAS also broke down levels of potential forecasted emissions reductions for
2 “core” and “remaining” emissions sources:³³

3 **FIGURE 17. FORECASTED GHG EMISSIONS AND REDUCTIONS UNDER THREE SCENARIOS (MTCO₂E) - ALL EMISSIONS.**



16 The Board of County Commissioners adopted the GHG inventory conducted by
17 Commerce in this document as well as the statewide emissions targets as part of its
18 comprehensive plan.³⁴ Commitment to the 2050 statewide emission targets requires
19 commitment to scenario (3) (local action), with emissions reductions as set out in the table
20 above.
21

22 The LAS also provides “reduction strategies” as “key GHG emission reduction
23 strategies for focus in Thurston County’s comprehensive plan update . . .” These include
24 the following:

- 25 • Reduce energy consumption in new and existing residential and commercial
26 buildings through: 1) supporting clean building energy sources and 2) energy
27 efficient building design and retrofits. Local action scenario to transition to
28 renewably building energy sources would reduce Thurston County’s built
29 environment emissions, which made up 34% of 2022 countywide emissions.
30

31 ³³ *Id.*, Bates No. 00775.

32 ³⁴ *IR-I, REC-353*, Bates No.10538 (Findings 62, 63).

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

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

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

Aside from the LAS, Commerce produced a more generally applicable interim climate element guidance document in December 2023, for use by jurisdictions such as Thurston whose periodic updates were due by December 31, 2025.³⁸ This document will be referred to as "the 2023 Commerce Guidance" in this decision. The 2023 Commerce Guidance is explicitly referred to in RCW 36.70A.070(9)(d)(i), which states: "The greenhouse gas emissions reduction subelement of the comprehensive plan, and its related development regulations, must identify the actions the jurisdiction will take during

³⁵ *IR-I, REC-028*, Bates No. 00753-754.

³⁶ *Id.*, Bates No. 00773-774.

³⁷ *Id.*, Bates No. 00797-805.

³⁸ RCW 70A.45.120(3); *IR-I REC-483*, Bates No. 21371, Wash. State Dep't of Commerce, *Climate Element Planning Guidance* (Dec. 2023) (2023 Commerce Guidance).

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

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

7
8 **only if:** . . . they are “projected to achieve greenhouse gas emissions
9 reductions or per capita vehicle miles traveled reductions **equivalent to what**
10 **would be required of the jurisdiction under the guidelines adopted by the**
11 **department;** and . . . they are supported by scientifically credible projections
12 and scenarios that indicate their adoption is likely to result in reductions of
greenhouse gas emissions or per capita mile traveled. (Emphasis added).

13 (iii) *Futurewise Challenge in Issue 1*

14 Futurewise challenges Thurston County’s adoption of a GHG reduction element on
15 the basis that it did not follow the 2023 Commerce Guidance.³⁹ Futurewise first points to
16 the mandatory language in Goal 14 and RCW 36.70A.070(9)(d)(i).⁴⁰ It then asserts that
17 since the County adopted a target of 95% reduction in GHG emissions by 2050, it should
18 have adopted the strategies and policies identified in the LAS, which provided a
19 demonstrated pathway to achieving the adopted emission reductions. Futurewise alleges
20 that since the County did not adopt all of these strategies and because many of the
21 strategies it did adopt were not measurable with a clear path to local implementation, the
22 subelement is not consistent with the 2023 Commerce Guidance and therefore
23 inconsistent with the statute.⁴¹ As a component of this argument, Futurewise criticizes
24 numerous strategies in the plan as vague or aspirational with unquantifiable outcomes,
25 and argues that the County was required to adopt policies “that have a demonstrated ability
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29 ³⁹ “2023 Commerce Guidance” is referred to in RCW 36.70A.070(9)(d)(i) as “guidelines published
30 by the department pursuant to RCW 70A.45.120.” For the purposes of this decision, that reference
31 refers to the Washington State Department of Commerce, Climate Element Planning Guidance
(December 2023).

32 ⁴⁰ Futurewise Brief at 2-3.

⁴¹ *Id.* at 4.

1 to reduce greenhouse gas emissions in order to achieve the statewide greenhouse gas
2 emissions.”⁴²

3 (iv) *County’s Response to Issue 1*

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

19 (v) *Board Analysis*

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

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27 ⁴² 2023 Commerce Guidance at 42; Futurewise Brief at 4-18.

28 ⁴³ Thurston County’s Response to Futurewise’s Prehearing Brief at 11. Thurston County’s Brief will
29 be cited as “Response Brief.”

30 ⁴⁴ *Id.*

31 ⁴⁵ *Id.*

32 ⁴⁶ Response Brief at 8 (capitalization and bold face omitted).

⁴⁷ Response Brief at 10.

⁴⁸ *Friends of Clark County & Futurewise v. Clark County*, GMHB No. 16-2-0002, Order on Summ. J.
at 6 (Sept. 9, 2016).

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

4 RCW 36.70A.070(9)(d)(i) requires that the plan and development regulations “**must**
5 **identify the actions**” the local jurisdiction will take that “**will . . . [r]esult in reductions**”
6 in GHG emissions generated by land use and transportation and in per capita vehicle miles
7 traveled within the jurisdiction. The Act further requires local jurisdictions to commit to
8 actions that “**will . . . [p]rioritize**” reductions that benefit overburdened communities. The
9 Board interprets the plain language of Goal 14 and RCW 36.70A.070(9)(d)(i) to mean that
10 the Legislature is mandating local jurisdictions to enact policies that will result in
11 demonstrable and measurable GHG emissions reductions in the minimum categories.
12

13 The Climate Commitment Act directs Commerce to include in its guidance “a set of
14 measures counties and cities may implement via updates to their comprehensive plans
15 and development regulations **that have a demonstrated ability to . . . reduce**
16 **greenhouse gas emissions . . .**”⁴⁹ In response to that language, Commerce provided a
17 “Menu of Measures” in the 2023 Guidance that includes policies “with a demonstrated
18 ability to reduce emissions.”⁵⁰ The Menu of Measures was also the source of policies
19 suggested to the County in the 2022 LAS.⁵¹ As indicated earlier, RCW 36.70A.070(9)(d)
20 includes three minimum requirements for local GHG emissions reductions: 1)
21 transportation and land use; 2) per capita vehicle miles traveled within the jurisdiction; and
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26 ⁴⁹ RCW 70A.45A.120(1) (emphasis added).

27 ⁵⁰ 2023 Commerce Guidance at 42, 62, & App. L.

28 ⁵¹ The County also argues that the 2022 LAS is not the document referred to in RCW
29 36.70A.070(9)(d)(i), so the LAS is entitled to no deference. The Board agrees that it is not the
30 document specifically identified in RCW 36.70A.070(9)(d)(i) and therefore this decision focuses on
31 the requirements of the 2023 Commerce Guidance. However, it is a distinction without a difference.
32 As stated above, the 2022 LAS goals, strategies, and policies (Appendix C) all derive from the “Menu
of Measures” in the 2023 Commerce Guidance. In addition, we give significant weight to the LAS in
recognition of the Department’s administrative expertise in this field. *See Futurewise, Kian Bradley,*
and Trevor Reed v. City of Mercer Isl., GMHB No. 25-3-0003, Final Decision and Order at 39-40
(Aug. 1, 2025).

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

3 Given the mandatory language in the statute and the goal, we disagree with the
4 County's assertion that statute contemplates an "iterative process that does not require
5 immediate implementation of development codes and capital projects."⁵² The statute
6 doesn't explicitly require immediate action, but it does contemplate that the local
7 jurisdiction will achieve their emission reduction targets in alignment with the state adopted
8 target schedule up to 2050.⁵³ In practical terms, the Legislature is mandating action by
9 local jurisdictions. It is up to each jurisdiction to create a program "with a demonstrated
10 ability to reduce emissions" in a manner which achieves those targets.

11
12 The County makes several arguments asserting the 2023 Commerce Guidance is
13 advisory in nature, none of which is compelling. First, it argues that only Commerce
14 rulemaking is entitled to deference by the Board and, since the 2023 Commerce Guidance
15 was not enacted by rule, it is entitled to no deference. But there is no need for the Board
16 to accord deference or significant weight, because here the Legislature has directly
17 required consistency with the 2023 Commerce Guidance within the statute;⁵⁴ or if not
18 consistency, a demonstration of equivalency based on "scientifically credible projections
19 and scenarios."⁵⁵

20
21 Based on the above, our read of the statute is that through the requirement of
22 consistency with Commerce guidance, the Legislature ensured that local jurisdictions will
23 meet a minimum standard with respect to reducing GHG emissions. To achieve this goal,
24 the Legislature tasked Commerce to come up with those standards, which they did in a
25 *Menu of Measures* attached as Appendix L to the 2023 Commerce Guidance. The LAS
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29 ⁵² Response Brief at 8 (capitalization and bold face omitted).

30 ⁵³ See 2023 Commerce Guidance at 43 ("Jurisdictions should use 2022 as their emissions baseline
31 year and set incremental targets that lead to achieving net zero emissions in 2050, consistent with
32 Washington's statewide target.").

⁵⁴ RCW 36.70A.070(9)(d)(i).

⁵⁵ RCW 36.70A.070(9)(d)(ii).

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

3 RCW 36.70A.070(9)(d)(ii) provides discretion to local jurisdictions to enact policies
4 that depart from those that Commerce has identified, with a big caveat: they must be
5 supported by scientifically credible projections that can establish GHG emission reductions
6 and the policy must be crafted to likely reduce GHGs. In other words, in this alternative
7 scenario the local jurisdiction must show its work to demonstrate that its policies will
8 achieve reductions equivalent to those of Commerce, at least with respect to the minimum
9 standards. The County did not do either.
10

11 We note that the Legislature's direct reference to the Commerce guidance manuals
12 required under RCW 70.45A.120 puts this "guidance" on a different level than that
13 reviewed under the usual standards of deference to interpretation of Commerce rules or
14 guidance examined in other cases. Given that the Legislature **required** consistency with
15 Commerce Guidance unless the local jurisdiction is able to demonstrate equivalent
16 reductions through other policies, we read the Act to require a local jurisdiction to adopt
17 Commerce's policies for the minimum requirements unless it is willing to do its own
18 rigorous analysis to demonstrate it will likely meet the reduction targets through different
19 policies. We also note that Commerce did fund the LAS specifically for Thurston County,
20 including an appendix containing specific goals, strategies, and policies "with a
21 demonstrated ability to reduce emissions" that would have provided the County with a safe
22 harbor on appeal had it adopted the minimum standards.⁵⁶
23
24

25 The 2023 Commerce Guidance reinforces the Board's interpretation of the
26 mandatory nature of the Act and the need for quantitative data that demonstrates the
27 effectiveness of the policies in reaching GHG emissions reduction goals.⁵⁷ While the 2023
28 Commerce Guidance is couched in "shoulds" and "mays," local jurisdictions should not
29 assume that means that compliance with the statute is optional. The 2023 Commerce
30

31 ⁵⁶ Thurston County 2022 Greenhouse Gas Emissions Analysis, *IR-I*, REC 028, Bates 0747;

32 ⁵⁷ 2023 Commerce Guidance at 42, 60-61.

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

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

12 The County opted to adopt different policies than those recommended by
13 Commerce. As stated above, in so doing, the County should have provided in the record
14 an analysis in the record with “scientifically credible projections” that establishes equivalent
15 reductions to those identified by Commerce. The County argues that it is not legally
16 required to follow every specific recommended action listed and the Board should defer to
17 local discretion.⁶⁰ While it is true that the County has a choice to avoid Commerce policies
18 on the minimum standards, in that instance the GMA requires that it provide a technically
19 rigorous and scientifically credible analysis of how the policies it selected will meet the
20 GHG emissions reduction goals adopted in the comprehensive plan.
21

22 Here the County did not provide any scientifically credible projection analyzing how
23 much GHG emission reduction its adopted policies would achieve. In the absence of such
24 analysis, the County had no basis to conclude that its adopted policies for GHG emissions
25 reduction would be equivalent to or better than those identified by Commerce. The County
26 has not calculated the GHG emission reductions its policies will achieve. The County did
27 not provide the required equivalency analysis and, therefore, failed to meet the
28 requirements of RCW 36.70A.070(9)(d)(i).
29

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31 ⁵⁸ *Id.* at 44.

32 ⁵⁹ *Id.* at 42-43 (emphasis added).

⁶⁰ Response Brief at 12.

1 All the policies adopted by the County are detailed by Futurewise in an attempt to
2 demonstrate how they do not meet the requirements of the statute. We agree with
3 Futurewise that the County did not adopt policies reflecting the minimum standards as set
4 forth in the 2023 Commerce Guidance, but we will not scrutinize each adopted policy. It is
5 incumbent on the County, on remand, to put together a group of goals, policies,
6 development regulations, and actions that meet the minimum standards of the GMA as
7 explained in this decision, in a manner that reflects the County's local circumstances. The
8 County "should select measurable policies with a clear path to local implementation."⁶¹
9

10
11 **Issue No. 2. Did Thurston County's adoption of Resolution No. 16574 and Ordinance**
12 **No. 16575 violate RCW 36.70A.020 and (14); RCW 36.70A.070; RCW 36.70A.070(1);**
13 **RCW 36.70A.070(5); RCW 36.70A.070(9); RCW 36.70A.095; RCW 36.70A.100; RCW**
14 **36.70A.120; RCW 36.70A.130(1)(a), (1)(e), and (5)(b); RCW 36.70A.190; RCW**
15 **36.70A.210; RCW 36.70A.290(2); WAC 365-196-443; and Thurston County**
16 **Countywide Planning Policy 10.2 because the comprehensive plan's Chapter Two**
17 **Climate, Chapter Three Land Use, Chapter Four Environment, Recreation, and Open**
18 **Space, Chapter Eight Transportation, and Chapter Nine Capital Facilities and the**
19 **amended development regulations fail to equitably enhance resiliency to, and avoid**
20 **or substantially reduce the adverse impacts of, climate change and the climate goal**
21 **and related requirements and allow development and facilities inconsistent with**
22 **climate resiliency?**

23 Futurewise also challenges the resiliency subelement of the County's climate
24 element, along with related policies required under RCW 36.70A.070(9). RCW
25 36.70A.070(9)(e)(i) states:

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

32 ⁶¹ 2023 Commerce Guidance at 42.

1 hazards due to climate change. Specific goals, policies, and programs of
2 the resiliency subelement must include, but are not limited to, those
3 designed to:

4 (A) Identify, protect, and enhance natural areas to foster resiliency to
5 climate impacts, as well as areas of vital habitat for safe passage and
6 species migration;

7 (B) Identify, protect, and enhance community resiliency to climate change
8 impacts, including social, economic, and built environment factors, that
9 support adaptation to climate impacts consistent with environmental justice;
10 and

11 (C) Address natural hazards created or aggravated by climate change,
12 including sea level rise, landslides, flooding, drought, heat, smoke, wildfire,
13 and other effects of changes to temperature and precipitation patterns.

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

23 In its briefing, the County provides lists of policies and matches them to statutory
24 requirements, alleging that the list shows how the County is meeting each of the statutory
25 requirements.⁶³ It also argues that the statute provides no timelines for targeted results
26 and the GMA does not require immediate adoption of development regulations for newly
27 adopted policies and plans.⁶⁴ It cites the County's implementation Plan policies, which
28 provide timelines for certain policies and plans.⁶⁵ In addition, the County argues that
29

30 ⁶² Futurewise Reply Brief at 14-22.

31 ⁶³ Response Brief at 22-29.

32 ⁶⁴ *Id.* at 9.

⁶⁵ *Id.* at 29-30.

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

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

13
14 Specific goals, policies, and programs the resiliency subelement must
15 include, but are not limited to, those designed to:

16
17 (A) Identify, protect, and enhance natural areas to foster resiliency to
18 climate impacts, as well as areas of vital habitat for safe passage and
19 species migration;

20 (B) Identify, protect, and enhance community resiliency to climate change
21 impacts, including social, economic, and built environment factors, that
22 support adaptation to climate impacts consistent with environmental justice;
23 and

24 (C) Address natural hazards created or aggravated by climate change,
25 including sea level rise, landslides, flooding, drought, heat, smoke, wildfire,
26 and other effects of changes to temperature and precipitation patterns.⁶⁸

27 While the climate resiliency subelement language does not set specific targets in
28 the same manner that the GHG emissions reduction subelement language does, it is no
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31 ⁶⁶ *Id.* at 30-31.

32 ⁶⁷ *Id.* at 31-32.

⁶⁸ RCW 36.70A.070(9)(e)(i).

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

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

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

6
7 It is undisputed that while the County did adopt a resiliency subelement, it adopted
8 no amendments to development regulations to implement the plan. Futurewise argues that
9 the County's enactment violates RCW 36.70A.120 and RCW 36.70A.130(1)(e) because
10 the policies are unenforceable without development regulations.⁶⁹ It asserts there are
11 numerous examples of regulatory gaps between policies and regulations.⁷⁰ The County
12 argues that the statute does not include a specific timeline for targeted results, and the
13 County's plan sets reasonable implementation timeframes.⁷¹ Further, the County asserts
14 that the regulatory structure of the GMA does not require an immediate adoption of
15 regulations for the implementation of newly adopted policies and plans, relying on *Brinnon*
16 *Grp. v. Jefferson County*, 159 Wn. App. 446, 476-77 (2011) and WAC 365-196-500(1).⁷²

17
18 As with the GHG emission reduction element, we read the plain language of the
19 climate resiliency subelement as containing action-forcing requirements. While
20 aspirational policies are certainly not wrong, there must be a body of "goals, policies, **and**
21 **programs**" consistent with best available science as a part of the resiliency subelement
22 to meet the minimum requirements.⁷³

23
24 We conclude that the use of the term "programs" in RCW 36.70A.070(9)(e)(i)
25 means that the Legislature intended that local jurisdictions do something more than adopt
26 goals and policies. The term "programs" is not defined by the Act, so we look to the
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30 ⁶⁹ Futurewise Brief at 25.

⁷⁰ *Id.* at 26-30.

⁷¹ Response Brief at 29.

⁷² *Id.* at 7-9.

⁷³ RCW 36.70A.070(9)(e)(i)(emphasis added).

1 standard dictionary definition for its meaning.⁷⁴ Merriam-Webster Dictionary defines
2 “program” as “a plan or system under which action may be taken toward a goal.”⁷⁵ Applying
3 this definition in the context of the resiliency subelement, “program” means an initiative or
4 implementation measure under which action will be taken. This could include adoption or
5 funding of a program, or adoption of a development regulation. The Board reviews the
6 following policies as examples:
7

- 8 • County Policy CL-8.B.1: “Provide technical and financial assistance (e.g.,
9 grants and loans) to encourage improved manure and fertilizer management
10 . . . ”⁷⁶

11 This policy provides a specific, tangible action that has been shown to provide benefits in
12 the agricultural sector toward climate resiliency. This policy should also be implemented
13 through an implementation measure which outlines the concrete steps that will be taken
14 to implement the policy in the near future. The Board was unable to identify any
15 implementation measure for this policy in Appendix B of the comprehensive plan.
16

- 17 • County Policy CL-7.A.6: “Protect and restore natural ecosystems that
18 sequester and store carbon, such as forests, wetlands, prairies, and
19 estuaries.”⁷⁷

20 Again, this policy does provide a specific directive with mandatory language that, while
21 broad, could be implemented through a series of different actions such as conservation
22 programs and development regulations. However, the implementation measure related to
23 this policy contains a number of “action items” that provide vague promises related to this
24 policy, such as IP-CL-21: “Create and strengthen land use policies focused on preserving
25 and restoring native and climate adapted vegetation habitats.”⁷⁸ The implementation
26
27

28 ⁷⁴ *Baxter v. Western Wash. Univ.*, 20 Wn. App. 2d 646, 659 (2021) (to determine meaning, a court
29 considers the standard definition of the precise term used in the statute).

30 ⁷⁵ Merriam-Webster. (n.d.). Program. In Merriam-Webster.com dictionary. Available at
31 <https://www.merriam-webster.com/dictionary/program>

32 ⁷⁶ See Response Brief at 27.

⁷⁷ See *id.* at 26.

⁷⁸ *IR-I, REC-353*, Bates No. 11060.

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

4 Vague general policies without clear, action-forcing implementation measures will
5 not effectively address climate change resiliency in the manner envisioned by the
6 Legislature, and the three minimum directives of RCW 36.70A.070(9)(e)(i) will not be
7 achieved.
8

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

14 The 2023 Commerce Guidance states:

15
16 The Growth Management Act requires that development regulations be
17 consistent with and implement the comprehensive plan . . . In addition to
18 adopting a comprehensive plan climate element with goals and policies,
19 your jurisdiction must adopt the necessary development regulations.⁸¹

20 This statement echoes the requirements of the Act at RCW 36.70A.040(4) and RCW
21 36.70A.130(1)(e), both of which require implementation of comprehensive plans through
22 development regulations. We disagree with the County’s assertion that there is no
23 requirement in the GMA to adopt development regulations to implement the plan. Ever
24 since the inception of GMA, the adoption of development regulations to implement the
25 comprehensive plan has been a foundational requirement of the GMA.⁸²

26 We do not read *Brinnon Grp. v. Jefferson County*, 159 Wn. App. 446, 476-77 (2011)
27 as a departure from that analysis. In *Brinnon Grp.*, the Petitioners alleged an internal
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30 ⁷⁹ 2023 Commerce Guidance, pp.15-41.

31 ⁸⁰ *Mercer Is.*, GMHB No. 25-3-0003, at 39-40.

32 ⁸¹ 2023 Commerce Guidance at 70.

⁸² See *Kittitas County Conservation, Ridge & Futurewise v. Kittitas County*, GMHB No. 10-1-0013
Final Decision and Order (June 6, 2011).

1 inconsistency based on the Brinnon subarea plan, which identified a “conceptual” master
2 planned community location in the subarea plan. In agreeing with the Board that there was
3 no inconsistency, the court of appeals specifically noted that the subarea plan contained
4 text that stated, “The land use maps provided are for initial discussion purposes only and
5 do not constitute land use designation proposals.”⁸³ The court found that because the
6 subarea plan was only conceptual, it did not preclude the land use designation established
7 by the site-specific comprehensive plan amendment on internal consistency grounds.⁸⁴
8

9 The *Brinnon Grp.* case does not stand for the proposition that there is no
10 requirement to adopt development regulations to implement comprehensive plan
11 directives, as the County argues. The case is limited to its facts and presents an entirely
12 different question unrelated to the need for implementation of the mandatory requirements
13 of RCW 36.70A.070(9)(e)(i). *Brinnon Grp.* involved the development of a master planned
14 community, which is an optional feature of the GMA, and the challenge involved internal
15 consistency between two (arguable) plan elements.⁸⁵
16

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

19 **WAC 365-196-800** Relationship between development regulations and
20 comprehensive plans.

21 (1) Development regulations under the act are specific controls placed on
22 development or land use activities by a county or city. **Development**
23 **regulations must be consistent with and implement comprehensive**
24 **plans adopted pursuant to the act.**

25 "Implement" in this context has a more affirmative meaning than merely
26 "consistent." See WAC 365-196-210. **"Implement" connotes not only**
27 **a lack of conflict but also a sufficient scope to fully carry out the**
28 **goals, policies, standards and directions contained in the**
29 **comprehensive plan.**⁸⁶

30 ⁸³ *Brinnon Grp.*, at 476-77.

31 ⁸⁴ *Id.*

32 ⁸⁵ *Id.*

⁸⁶ WAC 365-196-800(1)(emphasis added).

1 We agree with Commerce's interpretation here, and conclude that a requirement to
2 "implement" the comprehensive plan goes beyond internal consistency. It requires the
3 comprehensive plan and development regulations to function as an integrated whole to
4 fulfill the requirements of the GMA. That is especially true when the statute phrases
5 requirements in the form of mandates, as it does for the climate element.
6

7 We conclude that the County failed to implement its climate element through
8 development regulations and other action-forcing programs to ensure that the mandates
9 of the statute are met.
10

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

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

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

22 We agree with Futurewise that many of the County's policies are very broadly
23 worded and fail to direct specific action. Goals and policies may be aspirational, but the
24 subelement as a whole should provide clear goals, policies, and implementing measures
25 with action-forcing requirements and deadlines (programs, development regulations, and
26 funding commitments) that implement the minimum requirements of the statute. Without
27
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31 ⁸⁷ Futurewise Brief at 23.

32 ⁸⁸ 2023 Commerce Guidance, at 16; see RCW 36.70A.070(9)(e)(i)(A), (B), and (C).

⁸⁹ RCW 36.70A.070(9)(e)(i)(A), (B), and (C).

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

3 The County has done extensive and noteworthy planning in its effort to put together
4 its resiliency subelement.⁹⁰ It developed the Thurston County Climate Mitigation Plan in
5 2020 with regional partners.⁹¹ That document outlines in detail the impacts of climate
6 change within Thurston County.⁹² The County appears to have amassed an extensive
7 amount of information to aid it in complying with the requirements of RCW
8 36.70A.070(9)(e), but it has not provided a menu of action-forcing policies with clear
9 avenues for implementation. The 2023 Commerce Guidance states that the resilience
10 subelement must have at least one resilience goal and supportive policy for each climate-
11 exacerbated hazard that is relevant to the jurisdiction, and indicates that the *Menu of*
12 *Measures*, contained as an appendix to the 2023 Commerce Guidance, “denotes highest-
13 priority policies, based on their effectiveness, number of co-benefits, potential to promote
14 equity and justice, and other criteria.”⁹³

15
16
17 The Board recognizes that the County does not have authority to take actions
18 outside of its jurisdictional authority. However, there are many areas within the County’s
19 authority in which it can address and improve climate resiliency, but it has not clearly
20 addressed the minimum requirements in its policies or implementation measures. The
21 Board also recognizes there are funding constraints, but many actions would only require
22 prioritization of existing resources. The 2023 Commerce Guidance provides examples of
23 policies that are framed as action-forcing requirements and could provide a template.⁹⁴
24 The following is just one example of a goal with policies:⁹⁵
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29 ⁹⁰ *IR-I, REC-353*, Bates No. 10589-609.

30 ⁹¹ *IR-I, REC-353*, Bates No. 10592-93.

31 ⁹² *IR-I, REC-353*, Bates No. 10593-609.

32 ⁹³ 2023 Commerce Guidance at 37.

⁹⁴ *Id.* at 69.

⁹⁵ *Id.*

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

CG 6 Policies:

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

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

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

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

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

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

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

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

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

15
16
17 The County states that the planning commission selected policies directly tied to
18 overburdened communities.¹⁰¹ It also states that the following policies address
19 overburdened communities:

20 CL-1.A.1 requires environmental justice audits before new zoning
21 designations or rezones.

22 CL-1.B.7 directs accessible and affordable weatherization in overburdened
23 communities, particularly higher-density areas.

24 CL-1.C.3 fosters partnerships with organizations and educational institutions
25 serving overburdened communities to implement energy education and
26 incentive programs that reduce energy-cost burdens.

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29 ⁹⁶ Futurewise Reply Brief at 20.

30 ⁹⁷ *Id.* at 20.

31 ⁹⁸ *Id.* at 29.

32 ⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Response Brief at 31.

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

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

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

15 The Board concludes that the County failed to comply with the requirements of RCW
16 36.70A.070(9)(e)(i)’s requirement “to prioritize actions that benefit overburdened
17 communities that will disproportionately suffer from compounding environmental impacts
18 and will be most impacted by natural hazards due to climate change.”

19 In summary, the Board concludes that the actions of the County in adopting a
20 climate resiliency element as a part of Ordinance 16575 (REC 352) and Resolution 16574
21 (REC 353) were clearly erroneous and not in compliance with RCW 36.70A.070(9)(e)(i)
22 because the policies are, for the most part, vague and aspirational without a clear path to
23 implementation through development regulations and other programs. Accordingly, they
24 do not meet the statute’s requirement to equitably enhance resiliency to, and avoid or
25 substantially reduce the adverse impacts of climate change in human communities and
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31 ¹⁰² *Id.* at 32.

32 ¹⁰³ 2023 Commerce Guidance at 16-41 & 72-87.

¹⁰⁴ *Id.* at 72.

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

3 As indicated above, the County's plan update did not include specific goals, policies,
4 and programs "designed to:" (A) Identify, protect and enhance natural areas;(B) Identify,
5 protect, and enhance community resiliency to climate change impacts; and (C) Address
6 natural hazards created or aggravated by climate change, including sea level rise,
7 landslides, flooding, drought, heat, smoke, wildfire, and other effects of changes to
8 temperature and precipitation patterns.¹⁰⁶ Finally, the update also fail to meet RCW
9 36.70A.070(9)(e)(i)'s requirement to prioritize actions that benefit overburdened
10 communities that will disproportionately suffer from compounding environmental impacts
11 and will be most impacted by natural hazards due to climate change. The County failed to
12 identify overburdened communities and failed to collaborate with those communities to
13 create an action menu to reduce or avoid climate change related impacts.
14
15

16 **Issue No. 3. Did Thurston County's adoption of Resolution No. 16574 and Ordinance**
17 **No. 16575 violate RCW 36.70A.020, (10), and (14); RCW 36.70A.070; RCW**
18 **36.70A.070(1); RCW 36.70A.070(5); RCW 36.70A.120; RCW 36.70A.130(1)(a), (1)(e),**
19 **and (5)(b); and RCW 36.70A.290(2); RCW 36.70A.590; and RCW 90.44.050 because**
20 **the comprehensive plan's Chapter Three Land Use and Chapter Four Environment,**
21 **Recreation, and Open Space and the amended development regulations fail to**
22 **require permit exempt wells to comply with the requirements of the Growth**
23 **Management Act and RCW 90.44.050?**

24 Futurewise argues that during the periodic update, the County failed to revise its
25 development regulations to comply with RCW 36.70A.590.¹⁰⁷ RCW 36.70A.590 was
26 enacted by the Legislature in 2018 and requires that "[d]evelopment regulations must
27 ensure that proposed water uses are consistent with RCW 90.44.050 and applicable rules
28 adopted pursuant to chapters 90.22 and 90.54 RCW when making decisions under RCW
29
30

31 ¹⁰⁵ RCW 36.70A.070(9)(e)(i).

32 ¹⁰⁶ *Id.*

¹⁰⁷ Futurewise Brief at 32.

1 19.27.097 and RCW 58.17.110.” Futurewise cites several Washington Supreme Court
2 cases in support of its argument.¹⁰⁸

3 Futurewise alleges that the County is required to enact development regulations
4 limiting groundwater withdrawals that exceed 5,000 gallons per day as required by RCW
5 90.44.050, but has failed to do so. Futurewise further argues that because RCW
6 36.70A.590 was enacted in 2018, the County should have enacted new development
7 regulations in compliance with the statute by December 31, 2025.
8

9 The County argues that the claim brought by Futurewise is time-barred, citing
10 *Thurston County v. Western Washington Growth Mgmt. Hrgs. Bd.*, 164 Wn.2d 329, 190
11 P.3d 38, 45 (2008).¹⁰⁹ The County points out RCW 36.70A.590 became effective on
12 January 19, 2018,¹¹⁰ prior to the adoption of the County’s last periodic update on
13 November 12, 2019.¹¹¹ In addition, the County also argues that its sanitary code already
14 requires water availability findings.¹¹²
15

16 Futurewise responds that this issue is not time-barred because none of the findings
17 in Resolution 16574 or Ordinance 16575 (adopted December 16, 2025) acknowledged
18 Engrossed Substitute Senate Bill (ESSB) 6091 or RCW 36.70A.590. In support of its claim
19 Futurewise cites *City of Snoqualmie v. King County*, a 2013 Board case.¹¹³ There the
20 Board found that RCW 36.70A.130(1) requires that periodic updates of comprehensive
21 plans and development regulations include “a finding that a review and evaluation has
22 been made and identifying the revision made or that a revision was not needed and the
23 reasons therefor.”¹¹⁴
24
25

26 ¹⁰⁸ See *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 14, 43 P.3d 4, 11 (2002); *Kittitas*
27 *County v. Eastern Wash. Growth Mgmt. Hrgs. Bd.*, 172 Wn.2d 144, 180, 256 P.3d 1193, 1210
(2011).

28 ¹⁰⁹ Response Brief at 32.

29 ¹¹⁰ Laws of 2018, ch. 1, § 102 (enacting ESSB 6091, 65th Leg. Reg. Sess.

30 ¹¹¹ *Id.* at 34-35 (citing Res. 15836 and Ord. 15837);

31 ¹¹² Response Brief at 35; see *Thurston County Sanitary Code*, Article III, § 7.2.

32 ¹¹³ *City of Snoqualmie v. King County*, GMHB No. 13-3-0002 Final Decision and Order (Aug. 12, 2013).

¹¹⁴ *Id.* at 42-43.

1 We don't disagree that RCW 36.70A.590 incorporates water availability
2 requirements into the GMA, specifically the limited use of permit-exempt wells for
3 development. We also agree with Futurewise that the County has not demonstrated that
4 it has implemented this GMA requirement in county code. The County's citation to its
5 sanitary code is inapposite because that code requires review of water quality and quantity
6 of a groundwater source for safe drinking water supply purposes, which has to do only
7 with the physical availability of water and its quality as safe drinking water.¹¹⁵ The sanitary
8 code is an environmental health code enacted pursuant to RCW 70.05.060 and 70.46.060,
9 not a development regulation under the GMA.¹¹⁶ The County has not pointed out any GMA
10 development regulation implementing RCW 36.70A.590.
11

12 The question the Board is left with is whether Futurewise is foreclosed from this
13 challenge as a "failure-to-revise" because RCW 36.70A.590 was effective in January 2018,
14 nearly two years before the County's 2019 update. Review of the *Thurston County* case
15 indicates that the County is correct. In that case, the court reviewed the periodic update
16 statute, RCW 36.70A.130(1) and stated:
17

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

27
28 ¹¹⁵ Thurston County Sanitary Code, Article III, § 7.2. This code does not appear in the record, but
29 both the County and Futurewise have cited it in their briefing. We take official notice of the Thurston
30 County Sanitary Code § 7.2 pursuant to WAC 242-03-630(4).

31 ¹¹⁶ Thurston County Sanitary Code, Article III, § 7.1 (citing authority granted under WAC chapters
32 246-290, 246,291, and 173-160). The first two citations have to do with the implementation of safe
drinking water laws which address protection of public health with respect to water quality and
physical availability, and the third citation refers to minimum construction requirements for
commissioning and decommissioning a well).

1 Limiting the scope of failure-to-revise challenges recognizes the original
2 comprehensive plan was legally deemed GMA compliant. **A**
3 **comprehensive plan is presumed valid upon adoption, RCW**
4 **36.70A.320(1), and is conclusively deemed legally compliant if it is**
5 **not challenged within 60 days. The seven year update does not strip**
6 **the original comprehensive plan of its legal status as GMA**
7 **compliant, and we will not presume the intended such a drastic**
8 **measure in the absence of statutory language to that effect.** If the
laws have not changed, the comprehensive plan remains GMA
compliant.¹¹⁷

9 Futurewise argues that the County failed to do an appropriate analysis in its findings
10 to show why a revision to the code was not necessary, in either the 2019 or the 2025
11 periodic update, and therefore, the issue is not time-barred, citing *City of Snoqualmie*.¹¹⁸
12 In *Snoqualmie*, the Board reviewed the central requirement of RCW 36.70A.130(1)(a),
13 which states: “[e]xcept as otherwise provided, a county or city shall take legislative action
14 to review and, if needed, revise its comprehensive land use plan and development
15 regulations to ensure the plan and regulations comply with the requirements of this chapter
16”¹¹⁹ The Board focused on the definition of the term “legislative action,” which is defined
17 as follows: “Legislative action means the adoption of a resolution or ordinance following
18 notice and public hearing indicating at a minimum, a finding that a review and evaluation
19 has occurred and identifying the revisions made, or that a revision was not needed and
20 the reasons therefor.”¹²⁰ Pursuant to this definition, the Board found that although King
21 County performed the required update, it failed to provide any findings related to why a
22 certain revision was not needed; specifically, by articulating “how its existing
23 comprehensive plan policies and process comply with SHB 1825.”¹²¹ The Board
24 concluded that “[t]he County’s failure to revise or explain in the 2012 CP update does not
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29 ¹¹⁷ *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 344-345 (emphasis added).

30 ¹¹⁸ Futurewise Reply Brief at 23-24.

31 ¹¹⁹ *City of Snoqualmie* at 42-43.

32 ¹²⁰ RCW 36.70A.130(1)(c).

¹²¹ *City of Snoqualmie* at 43.

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

3 The Board does not read the *City of Snoqualmie* case to be inconsistent with the
4 general rule of the *Thurston County* case. In *City of Snoqualmie*, the Board allowed the
5 City’s failure-to revise challenge, because King County’s failed to update its plan during a
6 periodic update and did not explain why it did not need to revise its plan in response to
7 recently adopted legislation. The distinction is that the City had challenged the validity of
8 the plan within 60 days of adoption, or as part of the first periodic update after the
9 legislation went into effect. Citation to this case would be more compelling had Futurewise
10 brought the challenge after the 2019 periodic update. Here, Futurewise argues we should
11 hear a failure-to-revise challenge that should have been brought in 2019. Given the
12 language of the *Thurston County* decision cited above, the Board has no authority to hear
13 this challenge because Thurston County’s plan was deemed conclusively legally compliant
14 after the 60-day timeline expired in 2019. Futurewise Issue 3 is dismissed.
15
16

17
18 **B. South Sound Bird Alliance, White and Metzger (SSBA) Legal Issues.**

19 Black Lake Quarry LLC (BLQ) submitted a proposal to amend the future land use
20 map and zoning map for four parcels from Rural Residential 1/20 (R 1/20) to Rural
21 Resource Industrial (RRI) through the County’s comprehensive plan docket process.¹²⁴
22 The property is located at 4741 88th Avenue SW and contains four assessor parcels for a
23 total of (approximately) 270 acres.¹²⁵ Below is a map of the proposal:¹²⁶
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30 ¹²² *Id.*

31 ¹²³ *Id.*

32 ¹²⁴ *IR-II, REC-634*, Bates No. 24528. The County put the BLQ proposal on the docket.

¹²⁵ *IR-II, REC-634*, Bates No. 24528.

¹²⁶ *IR-II, REC-634*, Bates No. 24530.



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

(i) *Description of the Site*

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

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

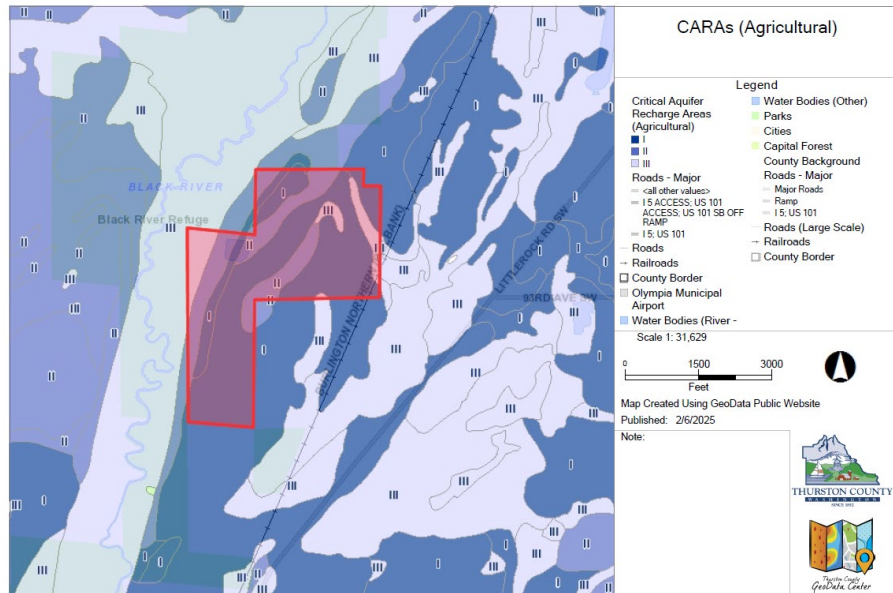
¹²⁷ *IR-II, REC-634*, Bates No. 24530.

¹²⁸ *IR-II, REC-658*, Bates No. 28453.

¹²⁹ *IR-II, REC-634*, Bates No. 24529.

¹³⁰ *IR-II, REC-634*, Bates No. 24529.

¹³¹ *IR-II, REC-634*, Bates No. 24589.



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

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

¹³² IR-II, REC-634, Bates No. 24529.

¹³³ TCC 20.29.020.

¹³⁴ IR-II, REC-634, Bates No. 24529; see TCC 20.29.040(3).

¹³⁵ IR-II, REC-634, Bates No. 24529.

1 knotweed containment sites, noxious weed sites, and critical aquifer recharge areas.¹³⁶

2 As stated above, the proposal area is directly adjacent to the Black River and the National
3 Wildlife Refuge, owned and managed by the USFWS.¹³⁷ According to the USFWS:

4 The Black River Unit consists of a large, complex mosaic of wetland,
5 riparian, and upland habitats surrounding a low-lying river. These diverse
6 habitats include river and tributary channels, locally rare and unique bog,
7 shrub swamp, riparian forest, emergent marsh, seasonally flooded non-
8 native grassland, dry non-native grassland, and mixed forest. Drainage
9 from the nearby Black Hills creates Stony, Dempsey, and Waddell Creek
10 tributaries, as well as many seeps and springs. This low-gradient,
11 meandering river of tannin-stained, slow-moving, nearly silt-free water flows
12 southwesterly with a floodplain that is subject to frequent surface flooding
13 during winter and spring.

14 Within the boundary of the Unit, there is spawning and rearing habitat and
15 migration corridors for steelhead, cutthroat trout, and coho and Chinook
16 salmon. 150 species of migratory birds, including waterfowl and neotropical
17 songbirds, are found here. The Olympic mudminnow, a state-endemic and
18 state species of concern, survives in the Unit. The federally threatened and
19 state endangered Oregon spotted frog survives here thanks to the complex
20 system of wetlands and connections to the river. Some of the largest
21 Oregon spotted frog population in Washington State are found here.¹³⁸

22 (ii) *Locational Guidelines in the Comprehensive Plan*

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

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

30 ¹³⁶ IR-II, REC-634, Bates No. 24532.

31 ¹³⁷ IR-II, REC-634, Bates No. 24532.

32 ¹³⁸ IR-II, REC-634, Bates No. 24532.

¹³⁹ IR-II, REC-634, Bates No. 24533-34.

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

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

(iii) *Planning Commission Review*

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

¹⁴⁰ *IR-I, REC-353*, Bates No. 10640.

¹⁴¹ *IR-II, REC-636*, Bates No. 24619.

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

5 (iv) *The Rezone and Redesignation Action*

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

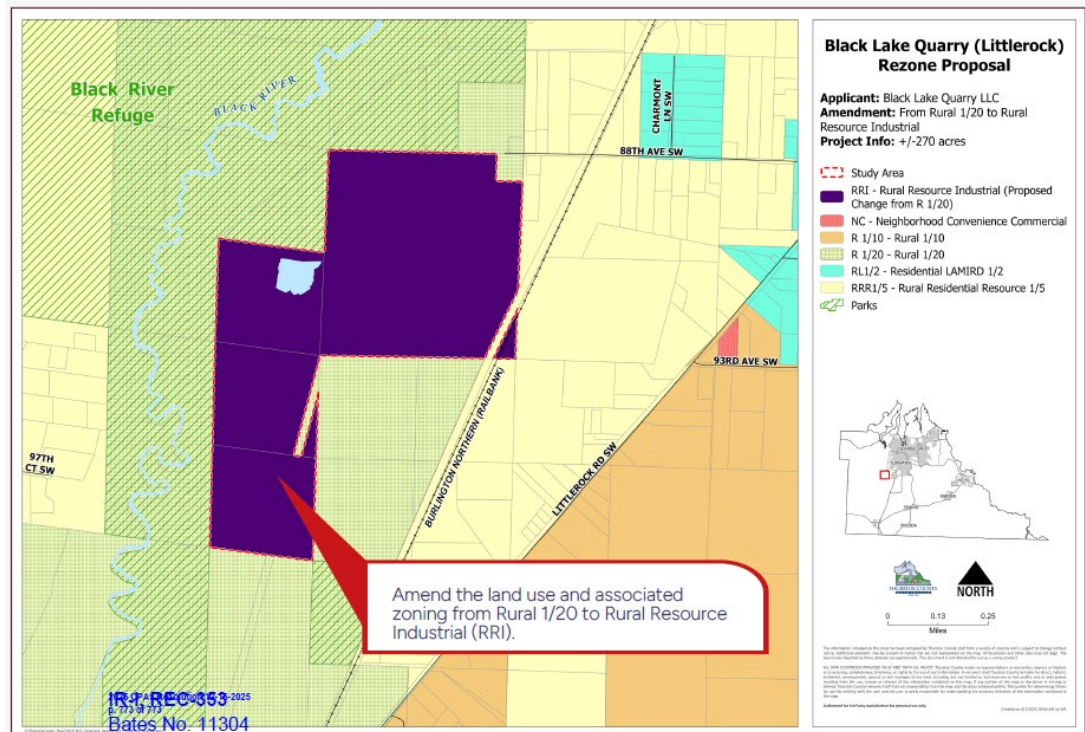
12 The following map was adopted both the zoning ordinance and the comprehensive
13 plan resolution:¹⁴⁵

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27 ¹⁴² *IR-II, REC-636*, Bates No. 24619-20.

28 ¹⁴³ *IR-I, REC-353*, Bates No. 10549 (findings); 11304 (map). In Section I of the Resolution, the BOCC
29 adopted findings for the "Black Lake Quarry Land Use and Zoning Amendment." The BOCC finding (1)
30 states: "The Black Lake Quarry Land Use Amendment and Associated Rezone updates the Thurston
County Future Land Use Map. It also updates the Official Zoning Map Thurston County, Washington in
corresponding Ordinance."

31 ¹⁴⁴ *IR-I, REC-352*, Bates No. 10353 (findings); 10527-28 (map).

32 ¹⁴⁵ *IR-I, REC-353*, Bates No. 11304. The adopted map identifies the applicant as Black Lake Quarry LLC.
The map described the "project info" as "+/- 270 acres."



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

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

¹⁴⁶ *IR-I, REC-353*, Bates No. 10549.

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

1 BLQ describes the proposal as actually being a rezone for 247 acres, not 270 acres,
2 based on a revision to the proposal that maintained approximately 24 acres in R 1/20.¹⁴⁸
3 And although BLQ acknowledges that the BOCC approved the full 270-acre rezone, it
4 describes that outcome as a “scrivener’s error” which does not correctly reflect the
5 proposal as approved.¹⁴⁹

6
7 It does appear from the discussion at the BOCC meeting at which the rezone was
8 approved that at least some of the commissioners were under the impression that there
9 was a 24-acre set aside for critical areas adjacent to the Black River.¹⁵⁰ However, the
10 Board cannot agree that the error, if there was one, is a scrivener’s error. The BOCC did
11 not address the 24-acre set aside in its findings in Ordinance 16575 or Resolution 16574.
12 It is also not otherwise clear from the record that the BOCC intended to carve out the 24-
13 acre area. The record demonstrates that the BOCC adopted a 270-acre rezone from R
14 1/20 to RRI, with no inclusion of a 24-acre set aside. Therefore, we conclude that BLQ’s
15 characterization of the alleged error as a “scrivener’s error” is inaccurate. This action does
16 not meet the definition of a scrivener’s error as the Board has identified in a previous
17 case.¹⁵¹ That definition is found in RCW 36.70A.035(2)(b)(iii), which addresses clerical
18 errors as exceptions for public review and comment:
19

20 (b) An additional opportunity for public review and comment is not required
21 under (a) of this subsection if:

22
23 (iii) The proposed change only **corrects typographical errors,**
24 **corrects cross-references, makes address or name changes, or**
25 **clarifies language of a proposed ordinance or resolution**
26 **without changing its effect.** (Emphasis added).
27
28

29 ¹⁴⁸ Black Lake Quarry Response Brief at 3. Black Lake Quarry’s Response Brief will be cited as
30 “BLQ Response Brief.”

31 ¹⁴⁹ BLQ Response Brief at 3.

32 ¹⁵⁰ *IR-II, REC-683* (transcript of December 2, 2025 BOCC meeting).

¹⁵¹ *See Comm. Lodging Operators of Chelan County, LLC, v. Chelan County*, GMHB No. 21-1-0007
at 12-13 (Mar. 24, 2022).

1 An alleged error that allows for a rezone of 24 acres is more than a “typographical error”
2 or other language clarification, since it materially modifies the effect of the action. As a
3 result, the Board must consider the rezone¹⁵² to be for the full 270 acres.

4 (v) *The GMA Challenge By SSBA*

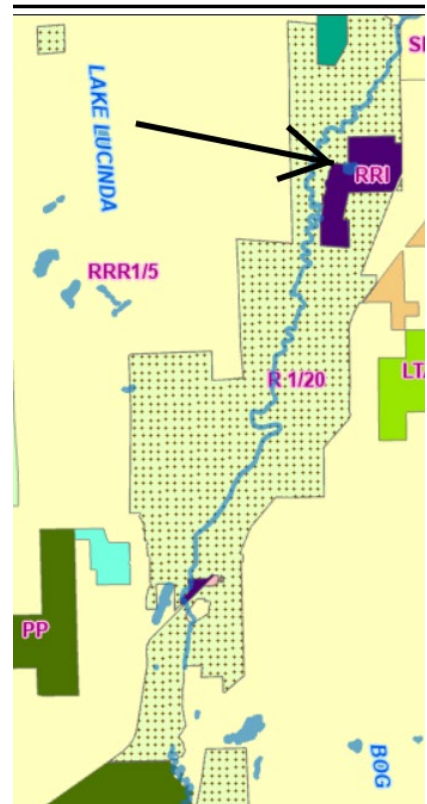
5 SSBA’s Petition For Review contained a total of 10 issues challenging the rezone.
6 At the Hearing on the Merits, SSBA withdrew Issues 6 and 13. SSBA also failed to address
7 Issue 10. After reviewing the entire record on this matter and considering the arguments
8 of the parties, the Board finds that the rezone is not in compliance with the GMA because
9 in adopting the rezone/redesignation, the BOCC failed to address the Locational
10 Guidelines in the comprehensive plan and failed to consider the specific rezone decision
11 requirements in comprehensive plan policies LU-1.B.10 and LU-1.B.11. Because the
12 BOCC failed to address the required decision criteria for rezones in its own comprehensive
13 plan, the rezone is inconsistent with and fails to implement the plan. The Board also finds
14 the rezone to be clearly erroneous because while BLQ relies heavily on the assertion that
15 24 acres of the rezone will be excerpted from the proposal to protect habitat for the Oregon
16 spotted frog and other species in the Black River Corridor, the 24-acre area remains within
17 the area rezoned/redesignated to RRI. The Board concludes that the rezone and
18 redesignation decision violates the internal consistency requirements of the GMA, and is
19 firmly convinced a definite mistake has been made, based on the following analysis.
20
21

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

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

1 SSBA asserts that the 270-acre rezone violates the
2 Locational Guidelines for RRI designations because the
3 properties are within the Black River Corridor, the area
4 lacks proximity to transportation infrastructure, and the
5 area contains more than minimal environmental
6 constraints, including critical areas. Further, SSBA alleges
7 the area is outside the service area for urban water and
8 sewer and will cause significant adverse effects to surface
9 and groundwater.
10

11
12 SSBA's first argument has to do with proximity to
13 the Black River Corridor.¹⁵³ SSBA alleges that the
14 property was expressly zoned R 1/20 to protect the Black
15 River Corridor, which originally encompassed the entire
16 proposal site.¹⁵⁴ The map portion on this page shows the
17 R 1/20 zoning designation in relation to the Black River.¹⁵⁵
18



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

- 21 (1) Protect public health and safety by minimizing development and **avoiding**
22 **incompatible uses in environmentally sensitive and hazardous**
23 **areas such as the Black River Corridor, the Nisqually Bluff, and**
24 **parcels completely covered by critical areas;**
25 (2) Provide greater opportunities for protecting critical areas and creating
26 open space corridors;
27

28 ¹⁵³ The Board reviewed the map attached to Ordinance 16575 and Resolution 16574, which appears
29 on page 42 of this decision. The scale on the map shows that the area zoned Rural Resource
30 Industrial extends to less than 0.13 miles (687 feet) from the Black River; and the map shows the
31 rezoned area borders the "Black River Refuge." The Board takes official notice of these facts
32 pursuant to WAC 242-03-640(1)(c).

¹⁵⁴ SSBA Reply Brief at 5; Bates No. 34688.

¹⁵⁵ Bates No. 34688.

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

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

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

20
21 SSBA points out that the Locational Guidelines of the comprehensive plan, as
22 reprinted above, “signal caution in making certain land use designations” when there are
23 widespread constraints or sensitive areas on the property.¹⁵⁹ The Guidelines indicate that
24 in that situation, either many uses that might otherwise be permitted in the designation
25 might not be permitted due to the constraints, or that sensitive areas may be harmed or
26 destroyed.¹⁶⁰

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29 ¹⁵⁶ See *IR-I, REC-353*, Bates No. 10663.

30 ¹⁵⁷ SSBA Brief at 11.

31 ¹⁵⁸ SSBA Brief at 11; see *IR-I, REC 353* Bates No. 10663.

32 ¹⁵⁹ *IR-I, REC-353*, Bates No. 10639.

¹⁶⁰ *IR-I, REC-353*, Bates No. 10639.

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

13
14 The Board has reviewed the Locational Guidelines and their applicability to the
15 rezone. The Board finds that the BOCC did partially address the Locational Guidelines in
16 Finding 10 in the ordinance. While Finding 10 did not address the Guidelines related to
17 environmental constraints, it did expressly find that "the proposed land use and rezone
18 amendment provides land use and zoning for rural resource industries that support natural
19 resources and the rural economy, without increasing or requiring urban services, and is
20 consistent with rural character."¹⁶⁷

21
22 The question remains concerning whether the BOCC's decision adequately
23 considered the environmental constraints of the property in accordance with the Locational
24 Guidelines. The zoning code and vicinity map supports SSBA's argument that the property
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26
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28 ¹⁶¹ BLQ Response Brief at 11.

29 ¹⁶² *Id.* at 11-12.

30 ¹⁶³ *Id.* at 12.

31 ¹⁶⁴ *Id.* at 13.

32 ¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *IR-I, REC-353*, Bates No. 10549.

1 is part of a corridor for protection of the Black River through R 1/20 zoning,.¹⁶⁸ As
2 demonstrated by the county's own maps, the site is entirely covered by Type 1, 2, or 3
3 CARAs.¹⁶⁹ While it is true that the County has regulations to limit certain uses in CARAs,
4 the Locational Guidelines caution against locating RRI in areas with critical areas without
5 reference to how critical areas regulations might mitigate harm ("[]and should be generally
6 be level and free of critical areas.").¹⁷⁰ In addition, there are numerous other critical area
7 concerns as verified by the staff report that have not been addressed by the BOCC in its
8 findings.
9

10 While the Board generally accords deference to the legislative authority to balance
11 competing requirements of the comprehensive plan to make decisions on land use
12 designations, the BOCC has not provided any findings related to the environmental
13 constraints of the property and how they affect its suitability as industrially zoned property.
14 Based on the evidence in the record, it is difficult to characterize the site as containing
15 "minimal environmental constraints." Specifically, the Guidelines for the RRI designation
16 state: *"Land should be capable of supporting industrial development with minimal
17 environmental constraints. Particularly important is the ability to support uses without
18 significant adverse effects on surface or groundwater. Land should generally be level and
19 free of critical areas."*¹⁷¹ The ordinance and resolution also did not include any finding
20 regarding effects of industrial uses in an area of high groundwater hazard, including the
21 60% impervious surface area allowance.
22
23

24 SSBA has met its burden to show that the area is encumbered with critical areas
25 and the rezone as adopted appears to violate the Locational Guidelines on its face,
26 particularly the sentences quoted in italics above. Because the BOCC did not address
27 these issues at all in its written findings, the adoption of the 270-acre rezone conflicts with
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30 ¹⁶⁸ IR-I, REC-353, Bates No. 11304.

31 ¹⁶⁹ IR-II, REC-627, Bates No. 24378.

32 ¹⁷⁰ IR-I, REC-353, Bates No. 10663.

¹⁷¹ IR-I, REC-353, Bates No. 10663 (emphasis added).

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

4
5 **Issue No. 5. Did the County violate RCW 36.70A.040(3), RCW 36.70A.070, and RCW**
6 **36.70A.130(1)(e) by adopting amendments that conflict with Policies LU-1.B.10 and**
7 **LU-1.B.11, where the record affirmatively shows noncompliance and/or where there**
8 **is an absence of analysis or evidence demonstrating compliance with the policies'**
9 **mandatory criteria?**

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

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

14 LU-1.B.10 states:¹⁷²

15 Rezoning of any parcel with a rural designation to a different designation should
16 only occur when one or more of the following apply:

- 17 a. Circumstances have substantially changed since the current land use
18 designation/zoning was adopted and the definition, characteristics or locational
19 guidelines for the current district no longer apply.
- 20 b. The rezone would promote the general welfare of the affected community.
- 21 c. The rezone would maintain or enhance environmental quality.
- 22 d. Thurston County pursues a legislative rezone.

23 SSBA argues that the rezone does not comply with Policy LU-1.B.10's requirements
24 (a) through (d). With respect to changed circumstances, SSBA asserts that there are no
25 changed circumstances meriting a rezone from R 1/20 to RRI.¹⁷³ Mining has existed on
26 the property for decades as a temporary special use, the environmental significance of the
27 Black River Corridor has not changed, the site is not adjacent to natural resource lands,
28
29
30

31 ¹⁷² LU-1.B.10(d), *IR-I*, REC-353, Bates No. 10677.

32 ¹⁷³ SSBA Brief at 13.

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

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

7
8 We will address the “should” v. “shall” argument highlighted by BLQ later in this
9 decision. The test of changed circumstances, embedded in the County’s comprehensive
10 plan, is a well-established legal test to ensure a rezone is in the public interest and to
11 prevent spot rezones.¹⁷⁶ The basic doctrine requires that “the proponent of a rezone must
12 show a substantial change in circumstances since the last zoning or amendment unless
13 the proposed rezone implements the policies of the comprehensive plan.”¹⁷⁷ Case law
14 establishes a variety of factors that courts consider when determining whether there is a
15 demonstration of substantial change in circumstances, including changes in public
16 opinion, in local land use patterns, and on the property itself.¹⁷⁸

17
18 The policy applies only to rural designations and first directs the decision maker to
19 examine whether the definition, characteristics or locational guidelines for the current rural
20 district no longer apply. In the Locational Guidelines, the primary land uses for R 1/20 are
21 “open space, outdoor recreation, residential, agriculture, forestry and compatible mineral
22 extraction approved through a special use process.”¹⁷⁹ The Guidelines further state that
23 the designation: 1) may contain forests, mineral resources, critical areas, and soils suitable
24 for agriculture; 2) allowed uses do not require provision of urban services or utilities; and
25
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28 ¹⁷⁴ SSBA Brief at 13.

29 ¹⁷⁵ BLQ Response Brief at 15-16.

30 ¹⁷⁶ See *Parkridge v. Seattle*, 89 Wn.2d 454, 462-63, 573 P.2d 359 (1978)(proponents of rezone had
31 burden of proof in demonstrating that conditions had substantially changed since the original zoning
32 such that a rezone was required in the public interest).

¹⁷⁷ *Henderson v. Kittitas County*, 124 Wn. App. 747, 754, 100 P.3d 842 (2004).

¹⁷⁸ *Henderson*, 124 Wn. App. at 754, 100 P.3d 842 (2004).

¹⁷⁹ *IR-I, REC-353*, Bates No. 10647.

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

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

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

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

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

23 The Board disagrees with BLQ's assertion that this finding addresses the general
24 welfare. While this statement relates to perceived benefits to natural resource industries
25 and the rural economy, it does not encompass the general welfare as a whole, which is
26 better reflected in the adopted Locational Guidelines in the plan. General welfare is related
27 to police power and the general authority for zoning, which encompasses a broad
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31 ¹⁸⁰ TCC 20.09B.010.

¹⁸¹ SSBA Brief at 13.

32 ¹⁸² BLQ Response Brief at 15; *IR-I*, REC-353, Bates No. 10549.

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

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

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

17 BLQ asserts that the area of the rezone has been under environmental review for
18 decades with groundwater monitoring occurring on a regular basis.¹⁸⁸ In addition, BLQ
19 points out that the County issued a determination of nonsignificance (DNS) under the State
20

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

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

29 ¹⁸⁴ *IR-II, REC-634*, Bates No. 24529.

30 ¹⁸⁵ *IR-II, REC-634*, Bates No. 2453-34.

31 ¹⁸⁶ SSBA Brief at 13.

32 ¹⁸⁷ SSBA Brief at 14.

¹⁸⁸ BLQ Response Brief at 15.

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

3 BLQ's argument may suffice to answer questions or appeals under SEPA, which
4 has its own procedural requirements. This appeal asks whether the rezone complies with
5 GMA's requirements. The GMA requires that a non-project rezone be consistent with the
6 comprehensive plan. The intensification of use that will be allowed under the RRI zone is
7 tested through the Locational Guidelines and policies such as LU-1.B.10. As already
8 stated, the rezone is inconsistent these policies, especially since the BOCC failed to
9 consider them. SEPA compliance is not a proxy for GMA compliance in this context. Even
10 if the impacts listed in the county's GMA plan criteria for rezones were not classified as
11 significant by the county in issuing the DNS, the DNS is a procedural determination to
12 determine whether an EIS is required. SEPA determinations alone cannot stand in for an
13 evaluation of plan-listed rezone criteria. The rezone ordinance did not contain analysis of
14 the Locational Guidelines or other rezone criteria, or citation to any studies or reports
15 providing that analysis.
16

17
18 The intensification of use that will be allowed under the RRI zone will result in
19 adverse environmental impacts, even if they were not classified as significant by the
20 county in issuing the DNS. The staff report evaluated the plan criteria and the
21 intensification of use and resulting impacts to the surrounding area in the form of noise,
22 traffic, light, and development incompatible with a rural landscape.¹⁹⁰ In addition, the
23 BOCC did not even address the plan's list of environmental issues that should be
24 considered in its findings, even though the record reveals that this property contains
25 sensitive habitat adjacent to the Black River. The Board agrees with SSBA that the rezone
26 will not maintain or enhance environmental quality and therefore does not meet the criteria
27 (c) of Policy LU-1.B.10.
28
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31 ¹⁸⁹ BLQ Response Brief at 15.

32 ¹⁹⁰ *IR-II*, *REC-634*, Bates No. 24529.

1 We note that the fourth criteria of LU-1.B.10 is whether “Thurston County pursues
2 a legislative rezone” and is not applicable to this appeal. No party has argued that this
3 rezone has been pursued by the County, nor has the County even submitted briefing on
4 this appeal. Further, the future land use map and zoning map both indicate that BLQ is the
5 applicant.¹⁹¹
6

7 Finally, as BLQ points out, Policy LU-1.B.10 uses “should” rather than “shall” as the
8 operative language. BLQ urges that the policy is not mandatory because the requirement
9 is not stated as an imperative.¹⁹² The Board notes that the context of the policy is that the
10 rezone “should only occur” if it meets one or more of the criteria, which suggests a more
11 mandatory reading. Regardless, the Board has held that the term “should” in policy
12 documents must be construed to have a specific directive meaning.¹⁹³ While there may be
13 a qualitative difference between “should” and “shall,” we hold that a comprehensive plan
14 policy cannot simply be ignored because it contains the word “should.” Here the BOCC
15 failed to address any of these requirements directly and therefore did not determine
16 whether the rezone met the requirements of the comprehensive plan. The rezone is
17 inconsistent with LU-1.B.10 because it does not meet any of the criteria. Internal
18 consistency means that planning policies and regulations must not make it impossible to
19 carry out one provision of a plan or regulation and also carry out others.¹⁹⁴ In this case,
20 the rezone policies requiring the BOCC to consider certain criteria in enacting a rezone
21 were ignored. The Board is firmly convinced that a mistake has been made and the failure
22 to address the requirements of LU-1.B.10 was clearly erroneous.
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28 ¹⁹¹ *IR-I, REC-353*, Bates No. 11304. The adopted map identifies the applicant as Black Lake Quarry
29 LLC.

30 ¹⁹² BLQ Response Brief at 16.

31 ¹⁹³ *Whidbey Envtl. Action Network v. Growth Mgmt. Hr'gs Bd.*, No. 80093-1-I, 2020 Wash. App.
32 LEXIS 569 at 26 (Ct. App. Mar. 9, 2020) (quoting *City of Snoqualmie v. King County, CPSGMHB*
No. 92-3-0004 (FDO, Mar. 1, 1993) (unpublished)).

¹⁹⁴ *Futurewise v. Whatcom County.*, GMHB No. 11-2-0010c Final Decision and Order at 121 (Jan.
9, 2012).

1 (ii) LU-1.B.11.

2 LU-1.B.11 states:

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

- 4 a. The impact of a proposed rezone on landowners remaining in the original
5 designation should be evaluated and considered;
- 6 b. The proposed rezone should only be allowed if there is projected to be minimal
7 adverse impact on neighboring landowners and on the continued use of a rural
8 district for natural resource-based industries or conservation purposes;
- 9 c. Regular, easily definable boundaries should be maintained; and
- 10 d. The rezoning should not increase the demand for urban levels of service.

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

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

26 The Board does not see any evidence that the BOCC considered impacts to
27 landowners within the remaining designation or that adverse impacts would be minimal on
28 neighboring properties and uses as discussed in the previous section. In particular, the
29 County staff report has documented impacts both to the National Wildlife Refuge and to
30

31 ¹⁹⁵ SSBA Brief at 15-16.

32 ¹⁹⁶ BLQ Response Brief at 17; *IR-I, REC-353*, Bates No. 10549.

1 neighboring property owners who would live next to the industrial uses.¹⁹⁷ There is no
2 evidence in the record that the BOCC considered any of that information as a part of their
3 decision. We agree with SSBA that the siting of an industrial zone directly adjacent to the
4 National Wildlife Refuge is problematic. The Locational Guidelines also require close
5 proximity to the interstate or state highway, because it will increase VMT through the rural
6 area and draw more urban services into this area through employee and customer traffic
7 in the rezone area. Again, the BOCC wholly failed to consider these issues in making its
8 decision on the rezone.
9

10 We reiterate our determination regarding LU-B.1.10 that is equally applicable to LU-
11 B.1.11: the BOCC failed to address any of these requirements directly and therefore did
12 not determine whether the rezone met the requirements of the comprehensive plan. While
13 we accord deference to local choices, especially in the rural area, we cannot accord
14 deference to this decision because the BOCC failed to follow its own criteria when it
15 considered the rezone. The Board is firmly convinced that a mistake has been made and
16 the failure to address the requirements of LU-1.B.11 was clearly erroneous.
17

18
19 **Issue No. 6. Did the County violate RCW 36.70A.040(3), RCW 36.70A.070, and RCW**
20 **36.70A.130(1)(e)'s consistency requirements by adopting amendments that are**
21 **inconsistent with Comprehensive Plan Policies NR-8.A.1, NR-8.A.2, and NR-9.A.1,**
22 **where conflicts cannot be avoided or minimized, the land is characterized by a**
23 **predominance of environmental constraints, allowed uses will adversely impact**
24 **adjacent or nearby land uses, and post-extractive uses will conflict with those**
identified at permitting? WITHDRAWN BY PETITIONER.

25 **Issue No. 7. Did the County violate RCW 36.70A.040(3), RCW 36.70A.070, and RCW**
26 **36.70A.130(1)(e)'s consistency requirements and fail to be guided by RCW**
27 **36.70A.020(10) by adopting amendments that are inconsistent with Policies EROS-**
28 **2.A.2 and EROS-2.A.3 where the rezone authorizes permanent intensive industrial**
29 **activity in extreme and highly sensitive aquifer recharge areas?**
30

31 ¹⁹⁷ *IR-II*, REC-634, Bates No. 24529-34.
32

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

7 **Issue No. 9. Did the County fail to be guided by the goals in RCW 36.70A.020(2), (3),**
8 **(4), (5), (9), (10), and (14) by adopting amendments inconsistent with Comprehensive**
9 **Plan policies and locational guidelines identified above, where the subject**
10 **properties lie within the Black River corridor; lack proximity to transportation**
11 **infrastructure, and where allowed uses will conflict with existing land uses and**
cause direct harm to critical areas, fish and wildlife, and a national wildlife refuge?

12 In Issues 7,8, and 9, SSBA challenges the rezone as inconsistent with numerous
13 plan policies and seven goals of the GMA. Each of these issues seeks to compare a map
14 amendment to a single policy or goal and asks the Board to find inconsistency on that
15 basis. The court of appeals addressed a similar issue in *Spokane County v. E. Wash.*
16 *Growth Mgmt. Hearings Board*, 173 Wn. App. 310, 333, 293 P.3d 1248 (2013). There, the
17 court reviewed a map amendment to determine whether it advances a certain policy in the
18 comprehensive plan:
19

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

1 inconsistency. The weighing of competing goals and policies is a
2 fundamental planning responsibility of the local government.¹⁹⁸

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

7
8 (i) *Issue 7.*

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

19
20 (a) EROS-2.A.2.

21 SSBA first argues that the rezone of the property precludes achievement of EROS-
22 2.A.2 because of the rezone will allow an increase in impervious surface coverage from
23 approximately 5% in R 1/20 to 60% under RRI.²⁰¹ SSBA also expresses concern that the
24 RRI zoning will allow intensive industrial uses that are significant sources of nitrogen,
25 chemical and other pollutants.²⁰² BLQ replies that SSBA is misreading the policy as a
26
27
28

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30 ¹⁹⁸ *Spokane County*, 173 Wn.App. at 333.

¹⁹⁹ *IR-I, REC-353*, Bates No. 10707.

²⁰⁰ *IR-I, REC-353*, Bates No. 10707.

²⁰¹ SSBA Brief at 17-18.

²⁰² SSBA Brief at 18.

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

3 The Board agrees with BLQ that the policy speaks to development of a system to
4 protect groundwater quality and prevent aquifer contamination in compliance with an array
5 of federal, state and local law and regulations. It does not imply a direct criterion applicable
6 to a rezone. While the rezone's impact on groundwater resources is a concern, this policy
7 simply requires the county to regulate in compliance with the law.
8

9 (b) EROS-2.A.3.

10 SSBA argues that the RRI rezone jeopardizes fish species of concern (coho and
11 chinook salmon, steelhead, and cutthroat) in the Black River and its tributaries because of
12 higher impervious surface limits and increase of water depletion in this area.²⁰³ SSBA also
13 argues that EROS-2.A.3 requires "restrictions" to sustain fish.²⁰⁴
14

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

19 The Board agrees with BLQ that the policy prescribes enactment of development
20 regulations to protect fish and does not specify a criterion applicable to the rezone action.
21 SSBA has not shown a consistency violation under the GMA.
22

23 (ii) *Issue 8.*

24 SSBA challenges the RRI rezone as inconsistent with 9 different comprehensive
25 plan policies. In a manner similar to Issue 7, SSBA describes the challenge as follows:
26 "the rezone is inconsistent with and fails to implement the nine Comp Plan policies
27 designed to protect surface water, fish and wildlife habitat, and the natural functions of
28 wetlands and waterways."²⁰⁵ SSBA's challenge fails because SSBA has not met its burden
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31 ²⁰³ *Id.*

²⁰⁴ *Id.*

32 ²⁰⁵ SSBA Reply Brief at 17.

1 of proof to show how the rezone will actually affect each of these environmental resources.
2 While SSBA relies heavily on the increased amount of impervious surface that would be
3 allowed under RRI, it does not point to any studies or scientific references that show that
4 there will be impacts as a result of the increase in impervious surface on this property. This
5 challenge is different than that in Issues 4 and 5, in that the policies and guidelines involved
6 in those Legal Issues are directed specifically to the process for analyzing rezones. By
7 contrast, the policy inconsistencies alleged in Issues 7 and 8 seek to directly find the
8 rezone inconsistent with a number of more general requirements “designed to protect
9 surface water, fish and wildlife habitat, and the natural functions of wetlands and
10 waterways.”²⁰⁶ Most of these requirements are directives to create critical areas
11 regulations and other similar development regulations.
12

13 The Board concludes that SSBA failed to meet its burden of proof on this issue. In
14 addition, most of the policies cited by SSBA prescribe enactment of development
15 regulations; to take them a step beyond their intended reach to directly test a rezone is not
16 the intent of the consistency requirements of the GMA. The Board would then run into the
17 problem identified with that approach by the Court of Appeals in the *Spokane County* case,
18 as discussed above.
19

20 (iii) Issue 9.
21

22 SSBA attempts to challenge the rezone on the basis of five of the goals listed in
23 RCW 36.70A.020. This challenge fails because it suffers from the same problem as Issues
24 7 and 8. The court in *Spokane County* rejected the idea that the Board could find that a
25 map amendment did not advance a particular goal, when, as recognized by the court,
26 “[g]oals considered by local governments in comprehensive planning may be mutually
27 competitive at times.”²⁰⁷
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31 ²⁰⁶ *Id.*

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

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

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

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

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

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

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

25 In Issues 11 and 12, SSBA argues that the BOCC's decision was erroneous
26 because the BOCC members relied upon inaccurate and inconsistent assumptions having
27 to do with reclamation, the Industrial Lands Study, whether 24 acres of the proposal was
28 taken out of the proposal, and the intensity of uses in the RRI zone.²⁰⁸ To demonstrate
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32 ²⁰⁸ SSBA Brief at 26-28.

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

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

11 Accordingly, SSBA Issues 11 and 12 are dismissed.

13 Summarizing the Board's analysis of SSBA's challenge through Issues 4-12, the
14 Board determines that County's adoption of Ordinance 16575 (REC 352) and Resolution
15 16574 (REC 353) is clearly erroneous because the Thurston County Board of County
16 Commissioners failed to consider Policies LU-B.1.10 and LU-B.1.11 and the Locational
17 Guidelines for Rural Resource Industrial Lands (contained at pp. IR-I, REC 353, Bates No.
18 10662-64) before it adopted the Black Lake Quarry Rezone, causing the rezone action to
19 be internally inconsistent with the comprehensive plan within the meaning of RCW
20 36.70A.040(3), RCW 36.70A.070, and RCW 36.70A.130(1)(e). The Board is left with the
21 firm and definite conviction that a mistake has been made. The rezone is remanded to the
22 County for further action in compliance with this Order.

25 **Issue No. 14. Should the Board enter a determination of invalidity under RCW**
26 **36.70A.302 on grounds that continued validity of the Black Lake Quarry Land Use**
27 **Amendments would substantially interfere with the fulfilment of the goals of the**
28 **Growth Management Act in RCW 36.70A.020(2), (3), (4), (5), (9), (10), and (14)?**

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

1 SSBA has requested that the Board make a determination of invalidity under RCW
2 36.70A.302 because the continued validity of the BLQ land use amendment would
3 substantially interfere with the fulfillment of the goals of the GMA, specifically Goals 2, 3,
4 9, and 10.²¹⁰ With respect to Goal 2, which is the anti-sprawl goal, SSBA argues that the
5 rezone is isolated in the heart of a rural corridor, surrounded on multiple sides by R 1/20
6 zoning and bordering on the National Wildlife Refuge.²¹¹ It further argues that there is no
7 functioning transportation network to support it because the site lacks freeway access, is
8 unserved by public transit, and has no active rail service.²¹² SSBA also alleges a significant
9 excess of developable industrial land is already available within urban growth areas.²¹³

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

19 With respect to Goal 9, which relates to open space, enhanced fish and wildlife
20 habitat and parks and recreation, SSBA urges that the reclamation originally required by
21 the Hearing Examiner and which is required under R 1/20 but not RRI, would have helped
22 to provide a restored ecosystem on the site.²¹⁶ It argues that the rezone will result in
23 “permanently degraded habitat in one of the most ecologically sensitive corridors in
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28 ²¹⁰ SSBA Brief at 31. Challenges under other goals not briefed by SSBA (Goals 4 and 5) were not
briefed, and the Board considers those challenges abandoned.

29 ²¹¹ *Id.* at 32.

30 ²¹² *Id.*

31 ²¹³ *Id.*

32 ²¹⁴ *Id.* at 33.

²¹⁵ *Id.* at 33.

²¹⁶ *Id.*

1 Thurston County.”²¹⁷ For similar reasons, SSBA contends that Goal 10, the environment
2 goal, is also violated.²¹⁸

3 BLQ argues that this case is distinguishable from cases in which the Board has
4 found invalidity in the past.²¹⁹ It further states that “[c]ontinued validity of the amendments
5 . . . would not authorize unrestricted industrial development, convert undisturbed
6 conservation land to general industrial use or prevent the County from fulfilling . . . GMA
7 goals . . . ”²²⁰ Without citation to authority, BLQ argues that “the rezone would not eliminate
8 the environmental controls that apply to the Property and future RRI development.”²²¹
9

10 RCW 36.70A.302(1) provides that:

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

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

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

19 (c) Specifies in the final order the particular part or parts of the plan or
20 regulation that are determined to be invalid, and the reasons for their
21 invalidity.

22 **The first criterion** for a finding of invalidity is met with a finding of noncompliance
23 and a remand of the Black Lake Quarry rezone within Ordinance 16575 and Resolution
24 No. 16574. The Board concludes the first criteria is met, as it finds that the rezone is
25 internally inconsistent with the comprehensive plan within the meaning of RCW
26 36.70A.040(3), RCW 36.70A.070, and RCW 36.70A.130(1)(e).
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29 ²¹⁷ *Id.* at 33-34.

30 ²¹⁸ *Id.* at 34.

31 ²¹⁹ BLQ Response Brief at 40.

32 ²²⁰ *Id.*

²²¹ *Id.*

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

6 A. The rezone interferes with Goal 2, because the rezone will convert
7 undeveloped land into sprawling development of an industrial nature. The Board highlights
8 the Locational Guidelines' requirement that "[w]hen sited in rural areas, industrial uses
9 should be clustered as much as possible, **so they don't create sprawling intensive uses**
10 **across the rural county.**"²²² This rezone will result in an island of industrial uses
11 surrounded by R 1/20 zoning and the National Wildlife Refuge. It will likely attract
12 substantial traffic on a rural road network. There will be visual impacts inconsistent with
13 rural character.²²³ The result will be sprawl. The Board also agrees with SSBA that the
14 rezone does not meet the comprehensive plan's Locational Guidelines, in that this property
15 is not near an interstate interchange or even a state highway. Industrial traffic and
16 employee traffic will be traveling upon rural roads near and adjacent to an important natural
17 corridor. While the Board recognizes the existing mining use currently involves truck traffic,
18 the rezone will open the door to more intense traffic impacts, as well as noise, light, traffic,
19 and environmental impact. In addition, commercial uses are allowed, which will draw traffic
20 into this area that is currently adjacent R 1/20 zoning, which includes agriculture,
21 residential uses, and the National Wildlife Refuge. Moreover, the BOCC failed to consider
22 the impacts of this intensification of use in a rural area in their findings on the record, which
23 indicates that the goals and the requirements of the GMA were not thoroughly considered
24 when the BOCC took its action.
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31 ²²² *IR-I, REC-353*, Bates No. 10663 (emphasis added).

32 ²²³ *Id.*, Bates No. 10661-62 ("Industrial areas and development shall be functionally and visually compatible with the surrounding rural area and uses to protect the rural character.").

1 B. The Board finds that the continued validity of the Black Lake Quarry rezone
2 will substantially interfere with Goal 3, which states, "Encourage efficient multimodal
3 transportation systems that will reduce greenhouse gas emissions and per capita miles
4 traveled, and are based on regional priorities and coordinated with county and city
5 comprehensive plans." The rezone thwarts fulfillment of this goal, because new
6 businesses will increase single-occupancy vehicle use by employees and customers, as
7 there is no transit service in the area. In addition, it will draw trucks and service vehicles
8 a distance off the highway and onto the rural road network. As stated above in Finding A,
9 the result of the rezone will be more intensive traffic patterns, more vehicle miles traveled,
10 and more greenhouse gas emissions, all of which frustrate the reductions of emissions
11 targeted by Goal 3.
12

13 C. The Board finds that the continued validity of the Black Lake Quarry rezone
14 will substantially interfere with Goal 9, which states, "Retain open space and green space,
15 enhance recreational opportunities, enhance fish and wildlife habitat, increase access to
16 natural resource lands and water, and develop parks and recreation facilities." As
17 determined in this decision, the proximity of this industrial rezone to the National Wildlife
18 Refuge is problematic. Surrounding uses include open space, residential, and
19 agriculture.²²⁴ As documented in the staff report and as indicated by the USFWS, the Black
20 River is host to a number of threatened and sensitive species. The site itself includes steep
21 slopes, frequently flooded areas, high groundwater hazard areas, shoreline areas, hydric
22 soils, prairie soils, mazama pocket gopher soils and areas, Oregon spotted frog areas,
23 wetlands, fish and wildlife habitat conservation areas, knotweed containment sites,
24 noxious weed sites, and critical aquifer recharge areas.²²⁵ Rezoning property adjacent to
25 the National Wildlife Refuge to allow industrial and commercial uses is the antithesis of
26 retaining open and green space or enhancing fish and wildlife habitat. The staff report
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31 ²²⁴ *IR-II, REC-634*, Bates No. 24529.

32 ²²⁵ *IR-II, REC-634*, Bates No. 24532.

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

3 D. The Board finds that the continued validity of the Black Lake Quarry rezone
4 will substantially interfere with fulfillment of Goal 10, which states, "Protect and enhance
5 the environment and enhance the state's high quality of life, including air and water quality,
6 and the availability of water." Water quality issues are also of concern, as the area is part
7 of a high groundwater hazard area and nearly the entire site is covered by critical aquifer
8 recharge areas. Again, the BOCC did not provide a record that reflects consideration of
9 this GMA goal or measures to prevent or mitigate harm to the environmental sensitivity of
10 the site.
11

12 E. The Board finds and concludes that failure to ensure that the rezone is
13 consistent with the adopted policies of the comprehensive plan substantially interferes with
14 fulfillment of the goals of the GMA, as explained above.
15

16 V. ORDER

17
18 Based upon review of the Petitions For Review, the briefs and exhibits submitted
19 by the parties, the GMA, prior Board orders and case law, having considered the
20 arguments of the parties, and having deliberated on the matter, the Board finds and orders:

- 21 • Thurston County's adoption of Ordinance 16575 (REC 352) and Resolution
22 16574 (REC 353) is clearly **erroneous** because the adopted plan is not in
23 compliance with RCW 36.70A.070(9), RCW 36.70A.070(9)(d), or RCW
24 36.70A.090(e).
25
- 26 • Thurston County's adoption of Ordinance 16575 (REC 352) and Resolution
27 16574 (REC 353) is clearly **erroneous** because the Thurston County Board
28 of County Commissioners failed to consider Policies LU-B.1.10 and LU-
29 B.1.11 and the Locational Guidelines for Rural Resource Industrial Lands
30 (contained at pp. IR-I, REC 353, Bates No. 10662-64) before it adopted the
31
32

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

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

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

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

1 SO ORDERED this 17th day of August, 2026.

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5 Barbara Ehrlichman, Board Member

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8 Alex Sidles, Board Member

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11 Rick Eichstaedt, Board Member

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13 **Note: This is a final decision and order of the Growth Management Hearings Board**
14 **issued pursuant to RCW 36.70A.300.²²⁶**
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29 ²²⁶ Any party may file a motion for reconsideration of this order with the Board within ten days of service of
30 the final order, as specified in WAC 242-03-830 or .840. Any party aggrieved by a final decision of the
31 Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514; RCW
32 36.01.050. See also RCW 36.70A.300(5); WAC 242-03-970. It is incumbent upon the parties to review all
applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to
provide legal advice.