BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD

EASTERN REGION

STATE OF WASHINGTON

CITY OF LEAVENWORTH, a Washington municipal corporation, Petitioner, v. CHELAN COUNTY WASHINGTON, a Washington municipal corporation, Respondent.	**CASE No. 23-1-0004** **FINAL DECISION AND ORDER**

SYNOPSIS

Petitioner City of Leavenworth challenged Chelan County (County) Resolution 2023-23 that amended the County Comprehensive Plan Map designations and adopted all amendments from the City of Leavenworth (City) Development regulations for its Urban Growth Area (UGA) (ATA-22-419) with the exceptions of Resolutions 1650 and 1651, leaving RL 10 and RL 12 zoning designations in the City UGA intact. Petitioner charged that in doing so, the County abandoned interjurisdictional planning, ignored the Countywide Planning Policies (CPPs) and ignored a long standing Memorandum of Understanding (MOU) between the County and cities of the County that was in place since 1997.

The question before the Board is whether the MOU controls in this case. The Board determined that the MOU does control in this case and the County's adoption of Resolution 2323-23, which excluded Resolutions 1650 and 1651, failed to meet its commitment under RCW 36.70A.210 to comply with the County Wide Planning Policies and interjurisdictional planning. The Board found in favor of the City, remanding the Resolution in question back to the County until such time as they can come into compliance.

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I. INTRODUCTION

One of the core requirements of the Growth Management Act (GMA) is that planning for growth be coordinated between communities and jurisdictions to reconcile conflicts.[1] The County in coordination with the cities within its jurisdiction established CPPs as required under GMA[2] and a MOU in 1997 which has controlled the management of UGA's in Chelan County ever since. Section 1 of the MOU reads:

> Chelan County will adopt each city's land use regulations, development standards and land use designations for that city's Urban Growth Area.

The City established a "Housing Task Force" in 2016 to address it obligations to plan for housing needs of their community as required in 36.70A.020(4), 070(1) and (2). As part of the process a Housing Needs Assessment was conducted in 2017. A City Council Housing Committee was established in 2018. The City Planning Commission also began work to address the various policies surrounding Housing. The City began to develop a Housing Action Plan (HAP) in 2019 and eventually issued a final HAP.

Through its deliberations and planning process the City initially considered converting RL-12 into RL-10[3], a new R-8 was eventually adopted in order to provide even great density within the UGA. This, along with a number of other recommendations, was forwarded to the County for consideration.

Ultimately the Board of County Commissioners (BOCC) contrary to County Planning Commission and staff recommendations,[4] adopted all of the City's land use regulations and development standards, except for those related to the new land use designation and rezone contained Ordinances 1650 and 1651.

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[1] RCW 36.70A.020(11)

[2] RCW 36.70A.210

[3] The RL-12 zone (12,000 square foot minimum lot size) into RL-10 (10,000 sf minimum lot size).

[4] Index 94-105, Chelan Cnty. DCD 2022 Comprehensive Plan Amendment Staff Report, at 12. *See* Index 5 (County Planning Commission transmittal to BOCC) at 5-15. (At the recommendation of staff, the Planning Commission did not adopt one Leavenworth code provision in Ordinance 1654 that merely identified other places in the city code that supported affordable housing. That provision is not a development standard and is not at issue in the appeal.).

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II. STANDARD OF REVIEW

Comprehensive plans and development regulations, and amendments to them, are presumed valid upon adoption.[5] This presumption creates a high threshold for challengers as the burden is on the petitioners to demonstrate that any action taken by the County is not in compliance with the Growth Management Act (GMA).[6] The Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations.[7]

The scope of the Board's review is limited to determining whether a County has achieved compliance with the GMA only with respect to those issues presented in a timely petition for review.[8] The Board is directed to find compliance unless it determines that the challenged action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.[9]

III. BOARD JURISDICTION

The Board finds the Petition for Review was timely filed, pursuant to RCW 36.70A.290(2). The Board finds the Petitioner has standing to appear before the Board, pursuant to RCW 36.70A.280(2)(a) and (b) and RCW 36.70A.210(6).

In its Response Brief, Respondent challenges the Board's jurisdiction over Petitioner's claims.[10] Thus, the Board addresses whether it has the authority to determine said claims before reaching the merits of the issues presented in Petitioner's Prehearing Brief. RCW 36.70A.280(1)(a) governs matters subject to Board review. As relevant here, it

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[5] RCW 36.70A.320(1).
[6] RCW 36.70A.320(2); *See also Lewis Cnty. v. Hearings Bd.*, 157 Wn.2d 488, 497 (2006); *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993); *King Cnty. v. CPSGMHB*, 142 Wn.2d 543, 561 (2000).
[7] RCW 36.70A.280, RCW 36.70A.302.
[8] RCW 36.70A.290(1).
[9] RCW 36.70A.320(3). In order to find the 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 (1993).
[10] Resp't Br. at 14-16. The Board notes that Chelan County did not file a motion to dismiss for lack of subject matter jurisdiction by the May 26, 2023, deadline set forth in the Board's Amended Prehearing Order for dispositive motions in this matter. *See* WAC 242-03-555, (Dispositive Motions).

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states that the Board "shall hear and determine only those petitions alleging" that "…state agency, county, or city planning under [Ch. 36.70A RCW] is not in compliance…""…with the requirements of [Ch. 36.70A RCW], [Ch. 90.58 RCW] as it relates to the adoption of shoreline master programs or amendments thereto, or [Ch. 43.21C RCW] as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or [Ch. 90.58 RCW].[11]

In other words, the Board's subject matter jurisdiction encompasses petitions alleging that local government planning under the Growth Management Act (GMA) is not in compliance with: "(1) the requirements of the GMA; (2) the Shoreline Management Act as it relates to shoreline master programs and amendments thereto; or (3) the [State Environmental Policy Act (SEPA)] as it relates to plans, development regulations, or amendments adopted under the GMA or the Shoreline Management Act."[12]

Respondent argues that the clear language of RCW 36.70A.280(1)(a) bars Petitioner's appeal because "it is not a challenge of an adopted regulation."[13]

The Board disagrees. While Respondent is correct that the Board has generally held that it lacks authority to review challenges to local government decisions that do not adopt or amend comprehensive plans or development regulations under RCW 36.70A.280(1), exceptions to this rule exist.[14] Specifically, the Board may review a county's decision not to adopt a comprehensive plan amendment or development regulation "when by such a denial the jurisdiction fails to fulfill an expressed, explicit mandate—either from

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[11] RCW 36.70A.280(1)(a). *See also* WAC 242-03-025(1)(a), (discussing subject matter jurisdiction).
[12] Samuel W. Plauché & Amy L. Kosterlitz, Road Map to the Revolution: A Practical Guide to Procedural Issues Before the Growth Management Hearings Boards, 23 Seattle U. L. Rev. 71, 77 (1999).
[13] Resp't Br. at 15.
[14] Indeed, Respondent expressly acknowledges the exception, stating that the "not in compliance" language set forth in RCW 36.70A.280(1)(a) "[c]learly…could be used if a county failed to adopt a Comprehensive Plan or necessary elements within the plan." Resp't Br. at 15. *See also id.*, (noting that "[t]he Board's power clearly encompasses review of County inaction in some circumstances.").

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the GMA or the [jurisdiction's] own [c]omprehensive [p]lan."[15] Petitioner's key contention here is that the County violated the interjurisdictional planning requirements of the GMA when, contrary to the MOU for UGA planning negotiated in 1997, Resolution 2023-23 rejected Leavenworth Ordinances 1650 and 1651.[16] Thus, the primary question for the Board is whether the County's refusal to adopt City Ordinances 1650 and 1651 fails to fulfill an expressed, explicit mandate set forth in either the GMA or the Chelan County Comprehensive Plan.

The Board first turns the threshold element of this question: namely, the source of the expressed, explicit mandate which the Petitioner alleges to be violated. Petitioner argues that the 1997 [17] As cited to the Board, the plain text of the County's current Comprehensive Plan provides:

> The remaining unincorporated areas of the County within the urban growth area boundaries are covered by the city comprehensive plans. Consistent with the County Wide Planning Policies, *and a Memorandum of Understanding with the cities*, the County has committed to coordinated planning to regulate the unincorporated areas of the cities [*sic*] urban growth areas.[18]

As shown above, the current Chelan County Comprehensive Plan incorporates and relies upon the 1997 MOU to direct planning within the County's unincorporated UGAs. Further, the Record shows that, consistent with the Chelan County Comprehensive Plan, that County Planning Staff in fact relied upon the 1997 MOU to recommend that both the County Planning Commission and BOCC adopt of Leavenworth Ordinances 1650 and

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[15] *Cainion v. City of Bainbridge Island*, GMHB No. 10-3-0013, Order on Mot. To Dismiss (January 7, 2011) at 2 (citing *Orchard Reach v. City of Fircrest*, CPSGMHB Case 06-3-0019, Order of Dismissal (July 6, 2006) at 5; *Tacoma v. Pierce Cnty.*, CPSGMHB Case 99-3-0023c, Order of Dismissal (Mar. 10, 2000); *Port of Seattle v. Des Moines*, CPSGMHB Case 97-3-0014, Final Decision and Order (Aug. 13, 1997)).
[16] *See* Petr's Prehr'g Br. at 6, (citing RCW 36.70A.210, RCW 36.70A.100, RCW 36.70A.010, and RCW 36.70A.020(11)).
[17] Pet'r's Prehr'g Br. at 8.
[18] *Id.* at 8, n. 40 (emphasis added) (citing Pet'r's Ex. B at 6 (Dec. 2017 Chelan County Comprehensive Plan, Introduction at 3)); Pet'r's Reply at 3. Note that Petitioner is using the same Exhibit numbers as used in its Prehearing Brief.

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1651.[19] Respondent does not dispute that the MOU is part of and relied on by the Chelan County Comprehensive Plan.[20] Based on these facts, **the Board finds** that the 1997 MOU is a functional component of the Chelan County Comprehensive Plan that directs County planning "to regulate the unincorporated areas of the cities' UGAs."

The next element of the inquiry is whether the 1997 MOU sets forth an expressed, explicit mandate that obligates the County to adopt Leavenworth Ordinances 1650 and 1651. Interjurisdictional planning between county and cities is required under the GMA. RCW 36.70A.210 requires counties to develop Countywide Planning Policies (CPPs) in cooperation with cities within their jurisdictions to ensure that local comprehensive plans are consistent as required by RCW 36.70A.100.[21] A CPP "is a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to [the GMA]."[22] The Supreme Court has recognized that, once adopted, CPPs are binding on local governments.[23]

While the GMA requires multijurisdictional coordination and cooperation between cities and counties, it "does not prescribe a particular process for the county/city collaboration and consistency that is promoted by the statute."[24] However, the Board has acknowledged that county/city planning agreements (such as MOUs) are a lawful method to implement the GMA's interjurisdictional planning requirements, finding that "County-wide planning policies provide only a framework for city/county planning consistency, unless the

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[19] Index 6-15 (Oct. 12, 2022, Chelan County Planning Staff Report to Chelan County Planning Commission, recommending adoption of Ordinances 1650 and 1651); Index 94-105 (Jan. 31, 2023 Chelan County Comprehensive Plan Amendment Planning Staff Report to BOCC, recommending adoption of Ordinances 1650 and 1651).

[20] Pet'r's Reply at 2.

[21] RCW 36.70A.210(1). RCW 36.70A.100 requires that the comprehensive plan of each county or city "shall be coordinated with, and consistent with, the comprehensive plans…of other counties or cities with which the county or city has, in part, common borders or related regional issues."

[22] RCW 36.70A.210(1).

[23] *King Cnty. v. Cent. Puget Sound Bd.*, 138 Wn.2d 161, 176, 979 P.2d 374 (1999).

[24] *The Cities of Bothell, Mill Creek, & Lynnwood v. Snohomish Cnty.*, GMHB 07-3-0026c, Final Decision and Order at 29 (Sept. 17, 2007) [hereinafter *The Cities*] (citing RCW 36.70A.210(1)). *See also Spokane Cnty. v. City of Spokane*, 148 Wn. App. 120, 129, 197 P.3d 1228 (2009) ("The GMA does not require counties and cities to enter into joint planning agreements.").

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parties in a particular county agree to a more binding arrangement."[25] A local government is required to comply both with GMA-imposed duties and self-imposed duties under the GMA.[26]

The record shows that Chelan County and its cities developed ten CPPs, which were adopted by the Board of County Commissioners (BOCC) on May 26, 1992.[27] Two Chelan CPPs address planning for UGAs:

> · Chelan CPP 2 – "Policies for Promoting Contiguous and Orderly Development and the Provisions of Urban Governmental Services to Such Development."[28]
>
> · Chelan CPP 6 – "Policies for Joint County and City Planning within Urban Growth Areas and Policies Providing for Innovative Land Use Management Techniques that May Include Use of Flexible Zoning Processes (i.e. Planned Unit Developments, Transfer of Development Rights, Cluster Development Density Bonus, etc.)[29]

Chelan County and the cities of Leavenworth, Wenatchee, Chelan, Cashmere, and Entiat signed the MOU on July 8, 1997,[30] which "set forth the agreement between the County and its cities on adoption and implementation of the unincorporated [UGA] land use regulations and development standards."[31] The 1997 MOU itself indicates that local government implementation of the MOU's terms "satisfies Policy #2 and Policy #6 of the County Wide Planning Policies."[32] Section 1 of the MOU sets forth the following agreement:

> *Chelan County will adopt each city's land use regulations, development standards and land use designations for that city's Urban Growth Area.* Where the cities [*sic*] review procedures for implementing land use regulations and

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[25] *The Cities,* GMHB 07-3-0026c at 29.
[26] *COPAC-Preston Mill Inc. v. King Cnty.*, GMHB No. 96-3-0013c (FDO, Aug. 21, 1996) (citing *Benaroya v. City of Redmond*, GMHB No. 95-3-0072, (FDO, Mar. 25, 1996), at 22).
[27] Pet'r's Ex. B at 4.
[28] Pet'r's Ex. B at 4-5; Pet'r's Ex. A at 3-4.
[29] Pet'r's Ex. B at 4-5; Pet'r's Ex. A at 8-9.
[30] Index 862-64.
[31] Index 862.
[32] *Id.*

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> development standards within the unincorporated urban growth areas conflict with Chelan County's review procedures, the County's procedures shall control.[33]

The Board finds that the above emphasized text—i.e., "*Chelan County will adopt each city's land use regulations…*"—is clear directional language providing a mandatory obligation that provides a basis for Board review. Chelan County was not required to negotiate or enter into the MOU, but chose to do so, thus creating a self-imposed duty within its Comprehensive Plan to comply with the MOU's terms. The MOU is a lawful way to implement CPPs #2 and #6. The MOU is a "more binding arrangement," and by joint agreement, constrains the exercise of the County's planning power for unincorporated UGAs.

Respondent cites a string of previous Board cases holding that local government decisions "*not to adopt* development regulations are not within the jurisdiction of the GMHB," but primarily relies upon a passage from the Board's determination in *Cole v. Pierce County* in support of this contention.[34] The paragraph Respondent attributes to *Cole* is actually found within the Board's order in *Chimacum Heights LLC v. Jefferson Cnty.*, and states:

> Denial of a proposed amendment to a Comprehensive Plan does not amount to an amendment of the Comprehensive Plan. RCW 20 36.70A.280 grants the boards' jurisdiction to hear and determine only those petitions alleging a jurisdiction is not in compliance with the GMA as it relates to the *adoption* of plans, development regulations or amendments of same. If a County, in exercising its GMA permitted discretion, does not take action to amend its Comprehensive Plan, the Growth Management Hearing Boards cannot over-ride a County decision and amend a Comprehensive Plan. Unless required by the GMA, it is in the County's discretion to decide to amend its comprehensive plan.[35]

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[33] *Id.* (emphasis added); Pet'r's Prehr'g Br. at 8 (Petitioner notes that "no such conflicting process is at issue here").
[34] Resp't Br. at 15, (citing *Stafne v. Snohomish Cnty.,* 174 Wn.2d 24, 32, 271 P.3d 868 (2012); *SR 9/US 2 LLC v. Snohomish Cnty.,* No. 08-3-0004, (Apr. 9, 2009) at 4; *Chimacum Heights LLC v. Jefferson Cnty.,* No. 09-2-0007, at 3 (May 20, 2009); *Cole v. Pierce Cnty.,* No. 96-3-0009c, (July 31, 1996) at 9-10).
[35] *Chimacum Heights LLC v. Jefferson Cnty.*, GMHB Case. No. 09-2-0007, Order on Dispositive Mot. (May 20, 2009) at 3-4..

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The Board's holdings in *Cole*, *Chimacum Heights LLC,* as well as the other cases cited by Respondent in fact contradict the assertion that the Board has concluded that it lacks "jurisdiction" to consider denials of comprehensive plan amendments. As the Board stated in *Cole*, a petitioner may have a claim that could properly be brought before the Board when a jurisdiction fails to meet a duty imposed by a provision of the GMA or takes action [including inaction] under RCW 36.70A.130.[36] As the Board held in *Chimacum Heights* excerpt quoted by Respondent, *"[u]nless required by the GMA*, it is in the County's discretion to decide to amend its comprehensive plan."[37]

Contrary to Respondent's assertion, Petitioner is not merely arguing "that the GMA compels the County to adopt their preferred policy through the MOU" or that the "County should not have rejected their proposal."[38] Rather, Petitioner makes a *prima facie* case that by refusing to adopt Leavenworth Ordinances 1650 and 1651, the County is failing to fulfill an explicit duty set forth within a functional component of the Chelan County Comprehensive Plan (i.e., the 1997 MOU). A determination of whether the County has complied with this express, self-imposed duty falls squarely within the Board's jurisdiction under the GMA.

Respondent's several arguments that the MOU "does not bind the County" are also unpersuasive.[39] The Board could find nothing in the Record to suggest that the 1997 MOU was only binding upon the County to "adopt the regulations of Leavenworth in the UGA, upon their first adoption."[40] Contrary to Respondent's unsupported assertion, Section 1 of the 1997 MOU unequivocally states that the County will adopt every future development

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[36] *Cole v. Pierce Cnty.*, GMHB Case No. 96-3-0009c, Final Decision & Order (July 31, 1996) at 11. *See also Concrete Nor'west v. Whatcom Cnty.*, GMHB No. 12-2-0007, Order on Mot. to Dismiss (June 25, 2012) at 4 (citing *Cole,* GMHB Case No. 96-3-0009c at 11).
[37] *Chimacum Heights LLC v. Jefferson Cnty.*, GMHB Case. No. 09-2-0007, Order on Dispositive Mot. (May 20, 2009) at 4 (emphasis added).
[38] Resp't Br. at 16.
[39] Resp't Br. at 8.
[40] *Id*.

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regulation in the UGAs proposed by the cities.[41] The Record further shows that the County understood this provision as an unequivocal obligation.[42]

For the above reasons, the Board finds it has jurisdiction over the subject matter of the petition pursuant to RCW 36.70A.280(1)

The Board finds and concludes:

- The MOU is incorporated in the County's Comprehensive Plan and in the first "Whereas" of Ordinance No. 2023-23.[43]
- The MOU states "implementation of this MOU satisfies Policy #2 and #6 of the County Wide Planning Policies."[44] Nothing in the record shows the County attempted to amend or rescind the MOU since its inception, and the County attorney confirmed this in questioning during the Hearing on the Merits.
- The County as a party to the MOU has created a self-imposed duty.[45]
- The Board has jurisdiction of the subject matter of this Petition.

IV. ABANDONED ISSUES

In its Prehearing Brief, the City of Leavenworth stated that it "is not pursuing Legal Issue 4 (public participation) and the Board may consider it abandoned."[46] Accordingly, the Board deems Petitioner's Issue 4 abandoned.

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[41] Cite Planning Staff Report, since it recognizes this point.
[42] Pet'r's Reply Br. at 3, (citing Index 5-6, 8, and 14). The Record also shows that the proceedings leading to the adoption of Resolution 2023-23, the County In recommending adoption of Leavenworth Ordinances 1650 and 1651, the October 2022 and Chelan County Planning Staff
[43] Ex. B (Chelan County Comprehensive Plan) Introduction at 3.; Index 1-4 at 1.
[44] Section 1. MOU, pg 1 of Index 862-864
[45] *Id.*
[46] Pet'r Prehr'g Br. at 6, n. 28.

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V. ANALYSIS AND DISCUSSION

A. Interjurisdictional Planning Requirements

Issue 1: Did the County violate the interjurisdictional planning requirements of RCW 36.70A.210, RCW 36.70A.100, RCW 36.70A.010, and RCW 36.70A.020(11) when, contrary to a negotiated memorandum of understanding for UGA planning, it rejected the City's multi-year planning and public-engagement effort designed to increase housing opportunities in the City and UGA?[47]

As stated above under the discussion of Board Jurisdiction, the County had a self-imposed obligation under Section 1 of the 1997 MOU to adopt the City's land use regulations, development standards and land use designations for Leavenworth's unincorporated UGA. The Record shows that Resolution 2023-23 did not adopt Leavenworth Ordinances 1650 and 1651, rejecting the City's new RL 8 designation and leaving the RL 10 and RL 12 zoning designations in the Leavenworth UGA intact.[48] The Board now turns to the question of whether a failure to comply with self-imposed duty (i.e., agreement under Section 1 of the 1997 MOU) results in noncompliance with the coordination and consistency requirements of the GMA.

The GMA states that "[i]t is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning."[49] Coordination between communities is a fundamental principle and goal of the GMA.[50] As discussed above, comprehensive plans must be coordinated between Counties and their Cities within their jurisdiction.[51] CPPs, as required by RCW 36.70A.210, set a general framework for coordinated land use and population planning between the county, its cities, and others to ensure respective comprehensive plans are consistent with each other.[52] Although not required by the GMA, joint planning

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[47] Prehr'g Order at 2.
[48] Index 3.
[49] RCW 36.70A.010
[50] RCW 36.70A.020(11)
[51] RCW 36.70A.100
[52] *The Cities* at 29 (Sept. 17, 2007)

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agreements such as the 1997 MOU are a lawful method to implement CPPs.[53]

In 1997 the County freely entered into the MOU.[54] It has not subsequently been amended or annulled, a point that Respondent does not dispute.[55] The MOU states, in part:

> Section 1: Chelan County will adopt each city's land us regulations, development standards and land use designations for that city's Urban Growth Area.

The County's assertion is stated clearly above in "Section I, Board Jurisdiction" of this decision. Their firm assertion is that the interjurisdictional planning requirements of the GMA,[56] do not require the adoption of every suggested amendment to the Comprehensive Plan submitted by the City for their UGAs.[57] They also deny any self-imposed duty as a party to the MOU. The Board disagrees.

The Supreme Court's discussion in *King County* provides helpful context for how the Board should review comprehensive plan provisions that are dictated by CPPs.[58] The Court addressed whether a CPPs directive requiring a county to include a certain area within a UGA was binding under the GMA.[59] While recognizing that CPPs are binding once adopted, the Court also found that "[t]here is no statutory language immunizing provisions of the comprehensive plan from review on the grounds that those provisions are mandated by the CPPs."[60] Thus, when a petitioner challenges comprehensive plan provisions that arise from CPPs mandating joint county/city planning for UGAs, the Board must review the challenged provisions to determine compliance with the GMA. A provision "that blatantly violates GMA requirements should not stand simply because CPPs mandated its adoption."[61] Note that Chelan County did not argue that the MOU was forcing it to adopt a

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[53] Id.
[54] Index 862-864.
[55] Pet'r's Reply Br. at 3.
[56] RCW 36.70A.210, RCW 36.70A.100, RCW 36.70A.010, and RCW 36.70A.020(11).
[57] Respondent Brief at 4.
[58] *King Cnty.*, 138 Wn.2d 161 at 175(County Planning Policies & County Wide Planning Policies are the same under GMA).
[59] *See id.* at 174.
[60] *Id.* at 176-77.
[61] *Id.* at 177.

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land use regulation that blatantly violated the GMA. No argument presented to the Board that the City of Leavenworth's RL8 zone is non-compliant with the GMA.

The Board finds and concludes that the Petitioner has carried the burden of proof to show that Resolution 2023-23 failed to be guided by and substantively comply with the coordination goal set forth in RCW 36.70A.020(11). The Board finds and concludes that Resolution 2023-23 does not comply with the interjurisdictional coordination and consistency provisions set forth in RCW 36.70A.210 and RCW 36.70A.100. The Board will remand Resolution 2023-23 to the County with direction to take legislative action consistent with the 1997 MOU to bring it into compliance with the goals and requirements of the GMA.

B. Other Issues

Issue 2: Did the County violate the requirements of RCW 36.70A.110 when it rejected the City's proposed amendments that increased densities in the UGA necessary to accommodate the urban growth anticipated for the City?

Issue 3: Did the County violate the consistency requirements of RCW 36.70A.040(3) and RCW 36.70A.070 (preamble, and subsections (1), (2), and (3)), when it rejected the City's proposed amendments, contrary to the County's Comprehensive Plan goals and policies for land uses and UGAs (Goal LU 1 and policy LU 1.5, and Goal LU 5 and Policies LU 5.1 through LU 5.11), diversity of housing (Goal H 1 and Policy H 1.1, and Goal H 2 and Policies H 2.1 through H 2.4), and capital facilities (Goal CF 1 and Policies CF 1.2, 1.4, 1.5, and 1.9; and Goal CF 2 and Policies CF 2.2 and 2.3)?

Issue 5: Did the County violate the requirements of RCW 36.70A.120 when it failed to conduct its planning activities in conformity with its comprehensive plan when it rejected the City's proposed amendments, and when it failed to follow its public participation requirements with respect to the proposed amendments?

The Board has determined that the County has violated the interjurisdictional planning and coordination requirements of the GMA and remands Resolution 2023-23 to the County for further proceedings in compliance with the 1997 MOU and the aforementioned GMA provisions. Compliance with the 1997 MOU and the GMA's interjurisdictional planning requirements obligates the County to (A) address the UGA

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planning criteria set forth in RCW 36.70A.110; (B) ensure internal consistency as per RCW 36.70A.040(3) and RCW 36.70A.070(1)-(3); and (C) conduct planning activities in accordance with RCW 36.70A.120 (including providing further public participation opportunities consistent with the Chelan County Comprehensive Plan). As such, the Board need not and **does not reach** the Petitioner's arguments regarding whether the County's failure to adopt Ordinances 1650 and 1651 results in a failure to comply with RCW 36.70A.110 (Issue 2), internal inconsistencies in violation of RCW 36.70A.040 and RCW 36.70A.070 (Issue 3), and failure to conduct planning activities or provide public participation opportunities contrary to RCW 36.70A.120 (Issue 5). The issue of the County's failure to comply with the interjurisdictional coordination requirements of the GMA disposes of the case.

VI. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, the GMA, prior Board orders and case law, having considered the arguments of the parties, and having deliberated on the matter, the Board finds that Petitioner has met its burden of proof demonstrating that the County's Ordinance 2023-23 failed to comply with the GMA, and remands the Resolution to the County to take such action as is necessary to come into compliance with the GMA.

The Board establishes the following schedule for the County to come into compliance with the GMA:

Item	Date Due
Compliance Due	April 1, 2024
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	April 15, 2024
Objections to a Finding of Compliance	April 29, 2024
Response to Objections	May 9, 2024
Compliance Hearing by Zoom **Meeting ID: 817 7704 8302** **Passcode: 513869**	**May 16, 2024** **10:00 am**

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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 the 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 25 pages, 35 pages for Objections to Finding of Compliance, and 10 pages for the Response to Objections.**

SO ORDERED this 3rd day of October, 2023.

Bill Hinkle. Presiding Officer

James J. McNamara, Board Member

Rick Eichstaedt, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300. [62]

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

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Appendix A: Procedural matters

On April 6, 2023, City of Leavenworth (Petitioner) filed a petition for review. The petition was assigned case no. 23-1-0004.

A prehearing conference was held telephonically on April 28, 2023. Petitioner appeared through its counsel Andy Lane. Respondent Chelan County appeared through its attorney Marcus Foster.

On July 13, 2023, the City of Wenatchee filed a Motion to Request Amicus Status. The Motion was granted and the Board accepted City of Wenatchee's Amicus brief on July 18, 2023.

The Briefs and exhibits of the parties were timely filed and are referenced in this order as follows:

- Petitioner City of Leavenworth's Prehearing Brief, July 13, 2023 (Petitioner's Brief)
- Brief of Respondent, July 28, 2023 (Response Brief)
- Petitioner City of Leavenworth's Reply Brief, August 7. 2023 (Reply Brief)

Hearing on the Merits

The Hearing on the Merits convened August 16, 2023. The hearing afforded each party the opportunity to emphasize the most important facts and arguments relevant to its case. Board members asked questions seeking to thoroughly understand the history of the proceedings, the important facts in the case, and the legal arguments of the parties.

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Appendix B: Legal Issues

Per the Prehearing Order, legal issues in this case were as follows:

1. Did the County violate the interjurisdictional planning requirements of RCW 36.70A.210, RCW 36.70A.100, RCW 36.70A.010, and RCW 36.70A.020(11) when, contrary to a negotiated memorandum of understanding for UGA planning, it rejected the City's multi-year planning and public-engagement effort designed to increase housing opportunities in the City and UGA?

2. Did the County violate the requirements of RCW 36.70A.110 when it rejected the City's proposed amendments that increased densities in the UGA necessary to accommodate the urban growth anticipated for the City?

3. Did the County violate the consistency requirements of RCW 36.70A.040(3) and RCW 36.70A.070 (preamble, and subsections (1), (2), and (3)), when it rejected the City's proposed amendments, contrary to the County's Comprehensive Plan goals and policies for land uses and UGAs (Goal LU 1 and policy LU 1.5, and Goal LU 5 and Policies LU 5.1 through LU 5.11), diversity of housing (Goal H 1 and Policy H 1.1, and Goal H 2 and Policies H 2.1 through H 2.4), and capital facilities (Goal CF 1 and Policies CF 1.2, 1.4, 1.5, and 1.9; and Goal CF 2 and Policies CF 2.2 and 2.3)?

4. Did the County violate the public participation requirements of RCW 36.70A.020(11) and RCW 36.70A.140 when it informed the public that it was continuing a public hearing on the City's proposed amendments, but abruptly announced at the continued hearing that no public testimony would be accepted?

5. Did the County violate the requirements of RCW 36.70A.120 when it failed to conduct its planning activities in conformity with its comprehensive plan when it rejected the City's proposed amendments, and when it failed to follow its public participation requirements with respect to the proposed amendments?

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