

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
WESTERN WASHINGTON REGION  
STATE OF WASHINGTON

JOHN PERANZI, VALLIE JO FRY AND TONY  
AND ISOBEL CAIRONE,

Petitioners,

v.

CITY OF OLYMPIA,

Respondent,

and,

PANZA, a Not for Profit Corporation,

Intervenor.

Case No. 11-2-0011

**FINAL DECISION AND ORDER**

**INTRODUCTION**

Analysis of the issues presented, as more fully set forth in the following Final Decision and Order, led the Board to the conclusion that the City of Olympia's actions in adoption of Ordinance No. 6771 violated RCW 36.70A.130(1)(d). The Board is well aware that homelessness is a pervasive problem throughout Washington State and the nation. Thurston County, the City of Olympia, Panza, and the homeless community are to be congratulated for their efforts to address the issue in the Thurston County area. The Board is also well aware of the difficulty of siting certain types of uses as often they are perceived, both accurately and inaccurately, as detrimental or incompatible with an area's existing uses.

Having said that, the City of Olympia may very well achieve its goal of establishing a permanent homeless encampment, whether in the Mottman Industrial Park or elsewhere. In

1 order to do so, the City's actions are required to comply with the Growth Management Act.  
 2 In this instance, the Board has concluded those actions fell short of such compliance.

### 4 I. PROCEDURAL BACKGROUND

#### 5 Petition for Review

6 John Peranzi, Vallie Jo Fry and Tony and Isobel Cairone (Petitioners) filed a Petition for  
 7 Review (PFR).<sup>1</sup> Panza, a non-profit corporation was granted intervenor status.<sup>2</sup> The PFR  
 8 challenges the City of Olympia's (the City) adoption of Ordinance No. 6771 (the Ordinance)  
 9 which amended the City's development regulations to authorize a permanent "County  
 10 Homeless Encampment" as a conditional use on property within the City's Light Industrial  
 11 Zoning District. The PFR asserts Growth Management Act (GMA) violations primarily  
 12 related to an alleged failure of the development regulations to be consistent with and  
 13 implement the City's Comprehensive Plan.  
 14

#### 16 Hearing on the Merits

17 The Hearing on the Merits (HOM) was held on March 13, 2012 in Tumwater, Washington.  
 18 Board members Raymond Paoella, Nina Carter and William Roehl participated with Board  
 19 member Roehl presiding. The Petitioners were represented by Heather L. Burgess and  
 20 Matthew Kernutt. Darren Nienaber represented the City. Intervenor Panza was  
 21 represented by Barnett N. Kalikow.  
 22

### 24 II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF, 25 AND STANDARD OF REVIEW

26 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and  
 27 amendments to them, are presumed valid upon adoption.<sup>3</sup> This presumption creates a high  
 28

31 <sup>1</sup> Filed November 10, 2011

32 <sup>2</sup> Order Granting Intervention, dated December 13, 2011

<sup>3</sup> RCW 36.70A.320(1) provides: Comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

1 threshold for challengers as the burden is on the Petitioners to demonstrate that any action  
2 taken by the City is not in compliance with the GMA.<sup>4</sup>

3  
4 The Board is charged with adjudicating GMA compliance and, when necessary, invalidating  
5 noncompliant plans and development regulations.<sup>5</sup> The scope of the Board's review is  
6 limited to determining whether the City has complied with the GMA only with respect to  
7 those issues presented in a timely petition for review.<sup>6</sup> The Board shall, after full  
8 consideration of the petition, find compliance unless it determines that the City's action is  
9 clearly erroneous in view of the entire record before the Board and in light of the goals and  
10 requirements of the GMA.<sup>7</sup> In order to find the City action clearly erroneous, the Board must  
11 be "left with the firm and definite conviction that a mistake has been committed."<sup>8</sup>

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14 In addition, when reviewing the City's planning decisions, the Board is instructed to  
15 recognize "the broad range of discretion that may be exercised by counties and cities" and  
16 to "grant deference to counties and cities in how they plan for growth."<sup>9</sup> However, the City's  
17 actions are not boundless; its actions must be consistent with the goals and requirements of  
18 the GMA.<sup>10</sup>

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21 <sup>4</sup> RCW 36.70A.320(2) provides: The burden is on the petitioner to demonstrate that any action taken by a  
22 state agency, county, or city under this chapter is not in compliance with the requirements of this chapter.

23 <sup>5</sup> RCW 36.70A.280, RCW 36.70A.302

24 <sup>6</sup> RCW 36.70A.290(1)

25 <sup>7</sup> RCW 36.70A.320(3)

26 <sup>8</sup> *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008) (Citing *Dept. of Ecology v. PUD*  
27 *District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 1993); See also, *Swinomish Tribe, et al*  
28 *v. WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488,  
29 497-98, 139 P.3d 1096 (2006).

30 <sup>9</sup> RCW 36.70A.3201 provides, in relevant part: In recognition of the broad range of discretion that may be  
31 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for  
32 the boards to grant deference to counties and cities in how they plan for growth, consistent with the  
requirements and goals of this chapter. Local comprehensive plans and development regulations require  
counties and cities to balance priorities and options for action in full consideration of local circumstances. The  
legislature finds that while this chapter requires local planning to take place within a framework of state goals  
and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this  
chapter, and implementing a county's or city's future rests with that community.

<sup>10</sup> *King County v. CPSGMHB*, 142 Wn.2d 543; 561, 14 P.2d 133 (2000) (Local discretion is bounded by the  
goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the

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### III. BOARD JURISDICTION

The Board finds the Petition for Review was timely filed pursuant to RCW 36.70A.290(2),<sup>11</sup> that Petitioners have standing to appear before the Board pursuant to RCW 36.70A.280(2),<sup>12</sup> and that the Board has jurisdiction over the subject matter of the Petition for Review pursuant to RCW 36.70A.280(1).

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### IV. PRELIMINARY MATTERS

The City filed a motion to supplement the record<sup>13</sup> the day before the Hearing on the Merits, on the afternoon of March 12, 2012. At commencement of the HOM the Petitioners stated they had no objection to the proposed supplementation. The exhibit<sup>14</sup> consists of e-mails between the City and the Thurston Regional Planning Council which state the specific property at issue in this matter, located in the Mottman Industrial Park, was not considered as industrial land for purposes of the City's most recent Buildable Lands Report.<sup>15</sup>

17 For purposes of supplementation, the Board must be convinced that ". . . proposed  
18 supplemental evidence is necessary or will be of assistance in reaching (its) decision."<sup>16</sup>

19  
20 RCW 36.70A.290(4) provides:

21           The board shall base its decision on the record developed by the city, county, or  
22           the state and supplemented with additional evidence if the board determines  
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24  
25 degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: The  
26 amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to  
27 give the [jurisdiction's] actions a "critical review" and is a "more intense standard of review" than the arbitrary  
and capricious standard. *Id.* at 435, Fn.8.

28 <sup>11</sup> Notice of Adoption of the Ordinance was published on September 17, 2011. The PFR was filed on  
November 10, 2011.

29 <sup>12</sup> Petitioners participated orally and in writing before the Olympia Planning Commission and the City Council,  
See, for example, Exhibits 37 and 54

30 <sup>13</sup> Respondent's Motion to Supplement the Record

31 <sup>14</sup> This Exhibit will be denoted as Exhibit 57.

32 <sup>15</sup> The e-mail from the Thurston Regional Planning Council states, in part: "The parcel . . . was categorized in  
our Buildable Lands inventory as Government and not Industrial . . ."

<sup>16</sup> *San Juan Floatplane Defense, et al. v. San Juan County, et al*, Case No. 99-2-0005, May 3, 2005.

1 implements many of the Comprehensive Plan's Housing Policies, including Policy 3.1, 3.5  
2 and 3.13.<sup>30</sup>

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4 Petitioner's Issue 1 asserts the Ordinance violates RCW 36.70A.040(3)<sup>31</sup> and RCW  
5 36.70A.130(1)(d) as the amendments fail to implement and are inconsistent with five of the  
6 City's Comprehensive Plan Industrial Policies: LU 18.1, LU 18.3, LU 18.4, LU 18.5 and LU  
7 18.6.

- 8 • **LU 18.1 Encourage industrial development which diversifies and**  
9 **strengthens the local economy, and is compatible with surrounding land**  
10 **uses.**

11  
12 An overarching premise of Petitioners' arguments is that the City's intent, with adoption of  
13 the Ordinance, was to allow a homeless encampment on a specific County-owned parcel  
14 within the Mottman Industrial Park, an existing industrially zoned area. Petitioners assert  
15 allowance of such a use on that property does not further LU 18.1's directive to "encourage  
16 industrial development".<sup>32</sup>

17  
18 Petitioners further criticize the City's argument in support of consistency: that the County  
19 "could decide at a future date to use this site for other industrial purposes or sell it for private  
20 uses". Petitioners state the intent, as shown in the record, is to construct permanent  
21 improvements and, therefore, any potential industrial use would be deferred for decades.<sup>33</sup>

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23 Petitioners also contend the proposed homeless encampment use would not be compatible  
24 with the surrounding land uses due to adjacent industrial operations, which generate noise,  
25 dust and truck traffic<sup>34</sup> and that proposed landscaping requirements have not been shown to  
26 be sufficient to eliminate incompatibility. Finally, they observe one of the City's contentions  
27 regarding compatibility ("there will be fewer social conflicts than if the proposal was located  
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30 <sup>30</sup> Id. at 8, 9

31 <sup>31</sup> Allegations regarding violations of RCW 36.70A.040(3) have been dismissed.

32 <sup>32</sup> Petitioners' Prehearing Brief at 6

<sup>33</sup> Id. at 7

<sup>34</sup> Id.

1 in a residential or commercial zone") does not in fact support such a determination.<sup>35</sup> In  
 2 response, the City focuses on whether the Ordinance is in conflict with the Policy. The  
 3 argument is that the contemplated site is now a permitted parking area for a nearby  
 4 proposed County jail and consequently is not currently being used for industrial purposes.  
 5 While the property remains in County ownership, the City opines it is unlikely to be used for  
 6 industrial purposes.  
 7

8 Although observing many of Petitioners' comments are tailored to a specific site, the City  
 9 also states Petitioners have failed to show that noise, dust or truck traffic would impact the  
 10 encampment and further suggest Petitioners have not shown "... a site governed by the  
 11 Ordinance will be any noisier, dustier, or more unsafe than wherever homeless persons  
 12 currently reside, such as downtown streets or the shrubbery adjacent to the freeway".<sup>36</sup>  
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- 15 • **LU 18.3 Encourage the full, intensive utilization of the existing industrial**  
 16 **land base. Development standards should be adequate to safeguard the**  
 17 **environment and ensure compatibility with surrounding land uses, while**  
 18 **allowing intensive site development.**

19 Petitioners state allowance of a permanent homeless encampment fails to implement the  
 20 policy to "encourage the full intensive utilization" of the Mottman Industrial Park or the City's  
 21 industrial areas. They observe the City's statement that the property could be returned at  
 22 some future date to an industrial use does not address that compatibility failure. Nor,  
 23 according to Petitioners, does the Ordinance "ensure compatibility". Rather, they again  
 24 reference the industrial area's creation of noise, dust and truck traffic and describe the City's  
 25 statement that no conflict would arise as merely "conclusory".<sup>37</sup>  
 26  
 27

28 The City argues Petitioners have failed to meet their burden to establish the Ordinance  
 29 discourages full utilization of the industrial land base. It also states the Ordinance  
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31 <sup>35</sup> Id.

32 <sup>36</sup> Respondent's Prehearing Brief at 10

<sup>37</sup> Petitioners' Prehearing Brief at 9

1 that such additional evidence would be necessary or of substantial assistance to  
2 the board in reaching its decision.

3 In addition, WAC 242-03-565 provides in part as follows:

4 Generally, the board will review only documents and exhibits taken from the  
5 record developed by the city, county, or state in taking the action that is the  
6 subject of review by the board and attached to the briefs of a party. A party by  
7 motion may request that the board allow the record to be supplemented with  
8 additional evidence.

9 (1) A motion to supplement the record shall be filed by the deadline  
10 established in the prehearing order, shall attach a copy of the document, and  
11 shall state the reasons why such evidence would be necessary or of substantial  
12 assistance to the board in reaching its decision, as specified in RCW  
13 36.70A.290(4). The board may allow a later motion for supplementation on  
14 rebuttal or for other good cause shown.

15 (2) Evidence arising subsequent to adoption of the challenged legislation is  
16 rarely allowed except when supported by a motion to supplement showing the  
17 necessity of such evidence to the board's decision concerning invalidity.

18 The deadline for filing a motion to supplement was January 3, 2012. However, in light of the  
19 Petitioners' lack of objection, the likelihood the exhibit would be necessary or of substantial  
20 assistance to the Board, and the City's explanation for failure to timely file its motion, the  
21 Board will allow the record to be supplemented with the proposed exhibit.

## 22 **V. ISSUES AND DISCUSSION**

### 23 **The Challenged Action**

24 As previously stated, the Ordinance amended the Olympia Municipal Code to authorize, as  
25 a conditional use, a single permanent homeless encampment on real property owned by  
26 Thurston County within the City's Light Industrial districts. Petitioners raise three issues in  
27 challenging the Ordinance. The first two of those issues allege the Ordinance's development  
28 regulation amendments are inconsistent with and fail to implement the City's  
29 Comprehensive Plan (Issue 1) and result in internally inconsistent development regulations  
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32

1 (Issue 2). Issue 3 requests the Board find the Ordinance substantially interferes with  
2 specified goals and policies of the GMA and seeks a determination of invalidity.

3  
4 Issues 1 and 2, in addition to setting forth violations of RCW 36.70A.040(3) and RCW  
5 36.70A.130(1)(d), also assert violations of "implementing regulations": WAC 396-196-500,  
6 WAC 396-196-800 and WAC 396-196-801.<sup>17</sup> That chapter of the Washington Administrative  
7 Code does not set forth substantive requirements. Rather, as RCW 36.70A.190(4)  
8 provides, chapter 396-196 WAC establishes procedural criteria to assist local jurisdictions in  
9 their GMA compliance efforts.<sup>18</sup> That fact is further clarified by WAC 365-196-030(2):  
10

11 **Compliance with the procedural criteria is not a prerequisite for compliance**  
12 **with the act. This chapter makes recommendations for meeting the**  
13 **requirements of the act, it does not set a minimum list of actions or criteria**  
14 **that a county or city must take. Counties and cities can achieve compliance with**  
15 **the goals and requirements of the act by adopting other approaches.**

16 Consequently, the Board will not address Petitioners' alleged WAC violations as no such  
17 violations can be established and those allegations will be dismissed. While the Board will  
18 consider the procedural criteria in reviewing Petitioners' allegations,<sup>19</sup> ultimate resolution of  
19 the issues will be based on the GMA itself together with appellate court and Board decisions  
20 interpreting same.

21  
22 Neither will the Board consider alleged violations of RCW 36.70A.040(3). That statute  
23 specifically sets forth *initial* county and city requirements following passage of the GMA over  
24 twenty years ago, including adoption of county-wide planning policies, development  
25 regulations protecting natural resource lands, designation of urban growth areas,  
26

27  
28 <sup>17</sup> The Board notes WAC 396-196-801 does not exist.

29 <sup>18</sup> RCW 36.70A.190(4): The Department shall establish a program of technical assistance:

30 (b) Adopting by rule procedural criteria to assist counties and cities in adopting comprehensive plans and  
31 development regulations that meet the goals and requirements of this chapter.

32 <sup>19</sup> WAC 365-196-030(3): How the growth management hearings board use these guidelines. The growth  
management hearings board must determine, in cases brought before them, whether comprehensive plans or  
development regulations are in compliance with the goals and requirements of the act. When doing so, **board  
must consider the procedural criteria contained in this chapter, but determination of compliance must  
be based on the act itself.**



1 comprehensive plans and implementing development regulations.<sup>20</sup> While it is true that  
 2 statute requires development regulations to be consistent with and implement the  
 3 comprehensive plan, RCW 36.70A.130(1)(d) applies to the adoption of amendments to  
 4 initially adopted comprehensive plans and development regulations. RCW 36.70A.130(1)(d)  
 5 sets forth the identical consistency and implementation requirements. Therefore, as to  
 6 Issues 1 and 2, the Board will only address possible violations of RCW 36.70A.130(1)(d)  
 7 and allegations regarding violations of RCW 36.70A.040(3) will be dismissed.  
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9  
 10 Petitioners' Issue 1:

11 Whether that portion of Ordinance No. 6771 adopting a text amendment to City  
 12 development regulations authorizing a permanent "County Homeless  
 13 Encampment, a high-density residential use, as a conditional use on Thurston  
 14 County-owned property within the City's Light Industrial ("LI") zoning district,  
 15 violates RCW 36.70A.040(3), RCW 36.70A.130(1)(d), and implementing  
 16 regulations WAC 365-196-500, -800, and -801, in that such amendment is not  
 17 consistent with and fails to implement the Industrial Goals and Policies set out in  
 18 the City's Comprehensive Plan?

18 Applicable Law

19 RCW 36.70A.130(1)(d) provides as follows:

20 Any amendment of or revision to a comprehensive land use plan shall conform to  
 21 this chapter. **Any amendment of or revision to development regulations shall**  
 22 **be consistent with and implement the comprehensive plan.**(emphasis added)

23 Positions of the Parties

24 The Ordinance amended the City's development regulations in order to allow a single  
 25 permanent homeless encampment as a conditional use within the City's Light Industrial  
 26 Districts (LI/C zones) solely on property owned by Thurston County. The crux of the alleged  
 27 inconsistencies/failures to implement arises from the fact the Ordinance authorized a  
 28 \_\_\_\_\_  
 29 \_\_\_\_\_

30 <sup>20</sup> RCW 36.70A.040(3): Any county or city that is initially required to conform with all of the requirements of  
 31 this chapter under subsection (1) of this section shall take actions under this chapter as follows: (d) if the  
 32 county has a population of fifty thousand or more, the county and each city located within the county shall  
 adopt a comprehensive plan under this chapter and **development regulations that are consistent with**  
**and implement the comprehensive plan** on or before July 1, 1994,

1 Permanent Homeless Encampment, a type of residential use within an industrial area which  
 2 the Record indicates may include a central community building with a kitchen, meeting  
 3 spaces, bathrooms, showers and laundry facilities surrounded by up to 30 tents or one-room  
 4 cottages provided with electricity, but lacking plumbing.<sup>21</sup> Petitioners argue the Ordinance  
 5 was intended to, and in fact does, apply solely to a specific property owned by Thurston  
 6 County, but located in the City's Mottman Industrial Park.<sup>22</sup>  
 7

8  
 9 The City argues portions of Petitioners' argument regarding incompatibility are site specific,  
 10 that the Ordinance amends the City's development regulations and thus constitutes a LI/C  
 11 zone amendment and, consequently, arguments regarding compatibility of the particular site  
 12 should not be considered by the Board.<sup>23</sup> It also states the Ordinance should be viewed as  
 13 an "innovative technique" as contemplated by RCW 36.70A.090 and that the City should be  
 14 "granted additional deference" due to that fact.<sup>24</sup> Intervenor Panza also argues the GMA  
 15 and the courts endorse the use of innovative techniques, citing RCW 36.70A.090 as well.<sup>25</sup>  
 16 Panza argues a permanent homeless encampment is indeed a novel, innovative use<sup>26</sup> – a  
 17 use inappropriate in a residential zone<sup>27</sup> – and that the City exercised its discretion to allow  
 18 the use in the most appropriate zone.<sup>28</sup>  
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20  
 21 The City further contends its Conditional Use (C/U) permit process would serve to minimize  
 22 potential conflicts with nearby uses.<sup>29</sup> In addition, the City observes the Ordinance  
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26  
 27 <sup>21</sup> Exhibit 24, attachment 4, pg. 6

28 <sup>22</sup> Petitioner Peranzi is the owner a heavy equipment leasing facility on property adjacent to the County  
 property planned for the Permanent Homeless Encampment.

29 <sup>23</sup> Respondent's Prehearing Brief, at 6

30 <sup>24</sup> Id.

31 <sup>25</sup> Brief of Intervenor Panza at 4

32 <sup>26</sup> Id.

<sup>27</sup> Id. at 5

<sup>28</sup> Id. at 5, 6

<sup>29</sup> Respondent's Prehearing Brief at 7

1 implements Housing Policy 3.1 which "authorizes special-needs housing throughout the  
 2 city". The City suggests Housing Policy 3.1 should be considered as an exception to  
 3 Industrial LU Policy 18.1<sup>38</sup> which should be viewed as a general rule.<sup>39</sup> Finally, the City  
 4 observes other special residential uses are allowed in the Industrial zone, including child day  
 5 care centers and secure community transition facilities.<sup>40</sup>

- 7 • **LU 18.4 Preserve industrial districts for industrial use. Limit non-  
 8 industrial uses in industrial districts to those uses which complement or  
 9 support industrial development. This could include associated offices,  
 10 restaurants, warehouses, day care facilities, parks and recreational  
 11 facilities, and other similar uses. Such uses should be limited in size and  
 12 number so that they do not unduly deplete the industrial land base,  
 13 preempt the siting of industrial uses, or elevate land prices to levels that  
 14 deter industrial development.**

14 Petitioners state there is no aspect of the proposed homeless encampment which would  
 15 complement or support industrial development as contemplated by this Policy. They  
 16 suggest the City's contention that a homeless encampment meets the Policy's directive to  
 17 limit nonindustrial uses to those which would complement or support industrial development  
 18 is groundless. They observe any residential use could be similarly justified.<sup>41</sup>

20 The City argues the Comprehensive Plan policies must be viewed as a whole rather than in  
 21 isolation. That allegation, the City states, is well illustrated by LU 18.4, which contemplates  
 22 certain types of nonindustrial uses in the LI/C zones, a fact which undercuts Petitioners'  
 23 argument regarding Policy 18.3.<sup>42</sup> That is, the City contends the types of uses contemplated  
 24 by Policy 18.4 would conflict with Policy 18.3 if each policy was viewed in isolation. The City  
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 26  
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30 <sup>38</sup> The Board assumes the City's reference is to Industrial Land Use Policy 18.3

31 <sup>39</sup> Petitioners' Prehearing Brief at 10

32 <sup>40</sup> Id. at 11

<sup>41</sup> Id. at 9

<sup>42</sup> Respondent's Prehearing Brief at 11

1 states the Ordinance is consistent with LU 18.4 as "a homeless encampment places an  
2 affordable workforce right near a job center."<sup>43</sup>

- 3
- 4 • **LU 18.5 Prohibit land uses in industrial districts which would be**  
5 **incompatible with existing or potential industrial uses. Consider**  
6 **providing notices on the title of property within a specified distance of**  
7 **industrial districts to make existing and prospective landowners aware of**  
8 **the nature of the industrial district, in an effort to minimize incompatible**  
9 **land uses and nuisance complaints.**

10 This policy again raises the question of compatibility. Petitioners contend the homeless  
11 encampment – a relatively intensive residential use – based on evidence in the record  
12 regarding industrial noise, dust and truck traffic, would be incompatible on its face.<sup>44</sup>

13 Petitioners contend the City cannot exempt the proposed residential use from state and local  
14 nuisance and noise provisions designed to protect residential uses, thus placing existing  
15 industrial uses at risk of such challenges.<sup>45</sup>

16

17 Here again, the City focuses on the consistency of the Ordinance stating Housing Policy 3.1  
18 "in effect," declares homeless facilities are in fact compatible with industrial uses<sup>46</sup>, and that  
19 the Ordinance, as well as the Hearing Examiner Conditional Use permit process will ensure  
20 compatibility.<sup>47</sup>

- 21
- 22 • **LU 18.6 Require industrial development to be designed, built, landscaped,**  
23 **operated, and maintained in a way that will ensure that it will be a good**  
24 **neighbor.**  
25 **a. Separate industrial areas from residential areas and other incompatible**  
26 **uses by buffers, landscaped parking areas, open space areas, and/or**  
27 **transitional commercial uses to minimize adverse impacts on adjoining**  
28 **uses.**

29 <sup>43</sup> Id. at 9

30 <sup>44</sup> Petitioners' Prehearing Brief at 10

31 <sup>45</sup> Id. at 11

32 <sup>46</sup> Housing Policy 3.1: Disperse housing for low- and moderate-income and special needs persons throughout Olympia and its Urban Growth Area, and discourage concentration of such housing in any one geographical area.

<sup>47</sup> Respondent's Prehearing Brief at 12

1           **b. Locate and design industrial uses which generate significant noise,**  
 2           **emissions, odor, or heavy traffic so that impacts on surrounding uses are**  
 3           **minimized. Standards for industrial uses must protect residential areas**  
 4           **from significant noise, pollution, and glare.**

5           **c. Restrict the height of buildings in industrial districts within one**  
 6           **hundred feet of the district boundary to no more than twenty-five percent**  
 7           **higher than the maximum height allowed in the adjoining district.**

8           **d. Require that the site access and internal circulation system for**  
 9           **industrial areas minimize traffic through residential areas and busy**  
 10           **commercial areas.**

11           This policy also involves questions of compatibility. Petitioners reference the language of  
 12           this policy requiring separation of industrial uses from residential areas to "minimize adverse  
 13           impacts on adjoining uses".<sup>48</sup> They observe the proposed homeless encampment is  
 14           immediately adjacent to Petitioner Peranzi's heavy equipment leasing facility and fronts a  
 15           road traveled by industrial truck traffic as well as a railroad track. It is Petitioners' contention  
 16           the Ordinance fails to meet the directive to separate industrial areas from residential areas  
 17           and other incompatible uses "with buffers, landscaped parking areas, open space areas,  
 18           and/or traditional commercial uses to minimize adverse impacts on adjoining uses".<sup>49</sup>

19           The City's response is similar to the manner in which Petitioners addressed it. That is, its  
 20           focus is on assurance of compatibility of the Homeless Encampment with its neighbors. The  
 21           City restates that the Ordinance's six-foot fence height and landscaping requirements  
 22           constitute minimums and that the Hearing Examiner Conditional Use process would address  
 23           specific compatibility issues.<sup>50</sup>

### 24           **Board Analysis and Findings**

25           The Board first considers peripheral issues raised by the City and Panza. The City asserts  
 26           the Board should not consider arguments raised by the Petitioners regarding compatibility of  
 27           permanent homeless encampments with a particular site: the County-owned parcel in the  
 28           

29           

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 30           <sup>48</sup> Petitioners' Prehearing Brief at 11, 12

31           <sup>49</sup> Id.

32           <sup>50</sup> Respondent's Prehearing Brief at 12

1 Mottman Industrial Park.<sup>51</sup> In light of the Board's analysis set forth below, it is unnecessary  
2 to address that contention.

3  
4 Both the City and Panza state the Board should consider the Ordinance as an "innovative  
5 technique" under RCW 36.70A.090 and grant the City additional deference.<sup>52</sup> Their  
6 assertion is the proposed use would serve as a model for other jurisdictions to follow in  
7 addressing the pervasive problem of homelessness. While the Board does not dispute that  
8 observation, RCW 36.70A.090 does not directly contemplate consideration of innovative  
9 techniques in development regulation. Rather, that statute pertains to comprehensive plans.  
10

11 **A comprehensive plan should provide for innovative land use management**  
12 **techniques, including, but not limited to, density bonuses, cluster housing,**  
13 **planned unit developments, and the transfer of development rights. RCW**  
14 **36.70A.090**

15 The Ordinance constitutes a development regulation amendment, not a comprehensive plan  
16 amendment. The City might have considered amending its Comprehensive Plan to address  
17 additional innovative land use management techniques regarding homeless encampments  
18 and industrial areas, and then followed that by adopting implementing development  
19 regulations. It did not do so although that may be appropriate for future consideration.  
20

21 Panza also argues a permanent homeless encampment should be considered an essential  
22 public facility (EPF), citing RCW 36.70A.200, which requires jurisdictions to include  
23 provisions for siting such uses.<sup>53</sup> That statute, in relevant part, provides:  
24

25 (1) The comprehensive plan of each county and city that is planning under RCW  
26 36.70A.040 shall include a process for identifying and siting essential public  
27 facilities. Essential public facilities include those facilities that are typically difficult  
28 to site, such as airports, state education facilities and state or regional  
29

30 <sup>51</sup> The Record makes it abundantly clear that the City, Thurston County and Panza considered a single  
31 property for development as the permanent homeless encampment. See, for example, Exhibits 24, 26, 29, 30  
and 36.

32 <sup>52</sup> Respondent's Prehearing Brief at 6; Brief of Intervenor Panza at 4

<sup>53</sup> Brief of Intervenor Panza at 6

1 transportation facilities as defined in RCW 47.06.140, regional transit authority  
 2 facilities as defined in RCW 81.112.020, state and local correctional facilities, solid  
 3 waste handling facilities, and in-patient facilities including substance abuse  
 4 facilities, mental health facilities, group homes, and secure community transition  
 5 facilities as defined in RCW 71.09.020.

6 2) Each county and city planning under RCW 36.70A.040 shall, not later than  
 7 September 1, 2002, establish a process, or amend its existing process, for  
 8 identifying and siting essential public facilities and adopt or amend its  
 9 development regulations as necessary to provide for the siting of secure  
 10 community transition facilities consistent with statutory requirements applicable to  
 11 these facilities.

12 The difficulty with Panza's argument is that the City did not engage in a process to identify  
 13 permanent homeless encampments as essential public facilities, adopt implementing  
 14 development regulations, and then proceed to site selection. A permanent homeless  
 15 encampment, such as envisioned, may very well constitute an essential public facility but  
 16 that issue is not before the Board. As with the Board's comment above on innovative  
 17 techniques, a public facilities process might be appropriate for future consideration.

18 Finally, both the City and Panza point to various Comprehensive Plan Housing Policies and  
 19 argue the Ordinance is consistent with and implements those policies. Assuming that  
 20 assertion to be accurate, however, does not resolve the matter.  
 21

22 The consistency required between DRs and the CP means that no feature of the  
 23 plan or regulation is incompatible with any other feature of a plan or regulation.<sup>54</sup>

24 While specific development regulations may clearly be consistent with and implement  
 25 specified comprehensive plan policies, they may not be consistent or compatible with other  
 26 comprehensive plan policies.<sup>55</sup> Comprehensive plans are required to be internally  
 27  
 28  
 29

30 <sup>54</sup> WAC 365-195-210, (Now WAC 365-196-210(8)); *CMV v. Mount Vernon*, Case No. 98-2-0006, FDO, July  
 31 23, 1998.

32 <sup>55</sup> *Cook & Heikkila v. Winlock*, Case No. 09-2-0013c, FDO at 35: "First of all, it would be inappropriate to  
 consider individual comprehensive plan goals in isolation from one another or to consider individual  
 development regulations without looking at all related comprehensive plan policies."

1 consistent.<sup>56</sup> It is thus necessary to consider the specific policies raised by Petitioners. To  
 2 rephrase a portion of the above quoted WAC: No feature of a development regulation may  
 3 be incompatible with any feature of a comprehensive plan.

4  
 5 Whether or not the Petitioners have met their burden of proof to establish that the Ordinance  
 6 is inconsistent with and fails to implement the Olympia Comprehensive Plan first requires a  
 7 clear understanding of the meaning of those terms. Thereafter, the Board must consider the  
 8 development regulations authorizing a permanent homeless encampment in light of each of  
 9 the Comprehensive Plan policies referenced by Petitioners.

10  
 11 In addressing the meaning of the words "consistent" and "implement", the Board begins with  
 12 RCW 36.70A.130(1)(d) which provides in part that "Any amendment of or revision to  
 13 development regulations shall be consistent with and implement the comprehensive plan."<sup>57</sup>

14 Those terms are defined in the Washington Administrative Code:

15  
 16 WAC 365-196-210(8): "Consistency" means that no feature of a plan or  
 17 regulation is incompatible with any other feature of a plan or regulation.  
 18 Consistency is indicative of a capacity for orderly integration or operation with  
 19 other elements in a system.

20 WAC 365-196-800(1): "Implement" in this context has a more affirmative  
 21 meaning than merely "consistent." See WAC 365-196-210. "Implement" connotes  
 22 not only a lack of conflict but also a sufficient scope to fully carry out the goals,  
 23 policies, standards and directions contained in the comprehensive plan.

24 The Board has in turn analyzed the meaning of those terms in numerous decisions:

25 The Board has stated that "consistency can also mean more than one policy not  
 26 being a roadblock for another; it can also mean that the policies of a  
 27

28  
 29  
 30 <sup>56</sup> RCW 36.70A.070(preamble), in relevant part, emphasis added: The comprehensive plan of a county or city  
 31 that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive  
 32 text covering objectives, principles, and standards used to develop the comprehensive plan. **The plan shall  
 be an internally consistent document** and all elements shall be consistent with the future land use map.

<sup>57</sup> . . . but the GMA requires that development regulations such as zoning ordinances be "consistent with and  
 implement the comprehensive plan[.]" *City of Bellevue v. East Bellevue C.C.*, 91 Wn. App. 461



1 comprehensive plan, for instance, must work together in a coordinated fashion to  
2 achieve a common goal."<sup>58</sup>

3 Growth Management Act (GMA) also requires that development regulations  
4 "implement" the policies and provisions of the comprehensive plan. "Implement"  
5 has a more affirmative meaning than merely "consistent with." Implement  
6 connotes not only a lack of conflict but sufficient scope to carry out fully the goals,  
7 policies, standards and directions contained in the comprehensive plan. We find  
8 that the R/ELDP zoning district does not implement Plan 2015's RSS land use  
9 designation.<sup>59</sup>

10 Perceived inconsistencies between a specific development regulation and  
11 specific, isolated comprehensive plan goals does not violate RCW 36.70A.040.  
12 Rather, an .040 violation results if the development regulations preclude  
13 attainment of planning goals/policies.<sup>60</sup>

14 In determining when an inconsistency exists between various parts of a local  
15 jurisdiction's planning policies and regulations, we have held that consistency  
16 means that no feature of the plan or regulation is incompatible with any other  
17 feature of the plan or regulation. *CMV v. Mount Vernon*, WWGMHB 98-2-0006  
18 (July 23, 1998 Final Decision and Order). Said another way, no feature of one  
19 plan may preclude achievement of any other feature of that plan or any other  
20 plan.<sup>61</sup>

21 A finding of inconsistency requires a showing of actual conflict between  
22 competing provisions of a city's planning policies and development regulations.<sup>62</sup>

23 In analyzing whether there is a lack of consistency between a plan provision and  
24 a development regulation, arising to a violation of the GMA, this Board has held  
25 that such a violation results if the development regulations preclude attainment  
26 of planning goals and policies.<sup>63</sup>

27 As the Board framed the analysis in the *Heikkila* decision<sup>64</sup>:

28 <sup>58</sup> *Alberg, et al v. King County*, Case No. 95-3-0041 at 15. See also: *West Seattle Defense Fund v. Seattle*,  
29 Case No. 94-3-0016 at 27; *Children's Alliance v. City of Bellevue*, Case No. 95-3-0011 at 25.

30 <sup>59</sup> *Bertelsen and Raine v. Yakima County*, Case No. 00-1-0009, FDO at 7.

31 <sup>60</sup> *Cook & Heikkila v. Winlock*, Case No. 09-2-0013c, FDO at 35

32 <sup>61</sup> *Ray, et. al. v. City of Olympia and Department of Ecology*, Case No. 02-2-0013, FDO at 9

<sup>62</sup> *Id* at 1

<sup>63</sup> *Martin v. Whatcom County*, Case No. 11-2-0002, FDO at 17

<sup>64</sup> *Cook & Heikkila v. Winlock*, Case No. 09-2-0013c, FDO at 35

1 In the context of this case, the questions before the Board might be phrased as follows:

2 Do the development regulations implement the comprehensive plan goals and  
3 policies?

4 Do any of the development regulation's features preclude achievement of any of  
5 the Comprehensive Plan policies?

6 The related critical question is whether Petitioners have shown actual conflict  
7 between [here, the City of Olympia's] Comprehensive Plan policies and its new  
8 development regulations or a failure of those development regulations to  
9 implement the Plan.

10 Thus we turn to analysis of the individual Comprehensive Plan policies, each of which shall  
11 be addressed in order.

- 12 • **LU 18.1 Encourage industrial development which diversifies and**  
13 **strengthens the local economy, and is compatible with surrounding land**  
14 **uses.**

15 This policy encourages industrial development to diversify and strengthen the local economy  
16 and which is compatible with surrounding land uses. Allowance of a homeless encampment  
17 in an industrial park cannot be read to conflict with this policy. The City can continue to  
18 *encourage* industrial development and insure it is compatible with surrounding land uses  
19 (emphasis added). The policy does not state "*Prohibit* uses (residential uses, for example)  
20 which are incompatible with industrial development" (emphasis added). Rather, this policy  
21 refers to the compatibility of industrial development with other uses. As observed by the  
22 City, the Ordinance's development regulations implement certain Comprehensive Plan  
23 Housing policies. On the other hand, the Ordinance does not thwart, or preclude,  
24 achievement of Land Use Policy 18.1. The Board concludes no feature of the development  
25 regulation precludes achievement of this Comprehensive Plan policy. The Petitioners have  
26 failed to meet their burden of proof to establish adoption of the Ordinance resulted in a  
27 violation of RCW 36.70A.130(1)(d) in regards to Land Use Policy 18.1.

- 28 • **LU 18.3 Encourage the full, intensive utilization of the existing industrial**  
29 **land base. Development standards should be adequate to safeguard the**  
30  
31  
32

1 **environment and ensure compatibility with surrounding land uses, while**  
 2 **allowing intensive site development.**

3 The Board rejects the City's contention Housing Policy 3.1 should be viewed as an  
 4 exception to Land Use Policy 18.3.<sup>65</sup> A comprehensive plan is required to be internally  
 5 consistent.<sup>66</sup> A comprehensive plan policy - which does not contain specific exceptions to  
 6 ensure consistency with another policy which would otherwise be inconsistent- cannot result  
 7 in a consistent comprehensive plan. The City has not shown such an exception exists but  
 8 merely asserted Housing Policy 3.1 should be considered as such.  
 9

10  
 11 The issue before the Board is again whether the Petitioners have met their burden to  
 12 establish a violation of RCW 36.70A.130(1)(d). Have they established the amendments do  
 13 not "encourage the full, intensive utilization of the existing industrial land base"? Do the  
 14 amendments preclude attainment of the Comprehensive Plan policy? In this instance, the  
 15 land is zoned light industrial and yet is designated for a use which is more akin to residential  
 16 than any other land use category. However, although the property in question is zoned  
 17 industrial, it is owned by a governmental entity, Thurston County, and is not part of the  
 18 "industrial land base". As the City established with the introduction of the e-mails between  
 19 the City and the Thurston Regional Planning Council (Exhibit 57), the specific property at  
 20 issue in this matter, located in the Mottman Industrial Park, was not considered as industrial  
 21 land for purposes of the City's most recent Buildable Lands Report.<sup>67</sup> Consequently, it does  
 22 not constitute a part of the industrial land base.  
 23  
 24

25 LU 18.3 also sets forth a policy stating development standards should be adequate to  
 26 ensure compatibility with surrounding land uses. Assuming that policy would apply to the  
 27

28  
 29 <sup>65</sup> Respondent's Prehearing Brief at 10

30 <sup>66</sup> RCW 36.70A.070 (Preamble, in part): The plan shall be an internally consistent document and all elements  
 shall be consistent with the future land use map.

31 <sup>67</sup> Perceived Inconsistencies between a specific development regulation and specific, isolated comprehensive  
 32 plan goals does not violate RCW 36.70A.040. Rather, a .040 violation results if the development regulations  
 preclude attainment of planning goals/policies. *Heikkila/Cook v. City of Winlock*, Case No. 09-2-0013c, Final  
 Decision and Order (Oct. 8, 2009).

1 permitting of the contemplated permanent homeless encampment, the Board finds the  
 2 Ordinance includes provisions for buffering and screening<sup>68</sup>, notice to residents that the  
 3 encampment is within a light industrial zone<sup>69</sup> and, significantly, authorization by the City  
 4 Hearing Examiner is subject to the City's conditional use process.<sup>70</sup> That process  
 5 authorizes the Hearing Examiner to impose additional conditions on a particular use if it is  
 6 deemed necessary for the protection of the surrounding properties.<sup>71</sup>  
 7

8 The Petitioners have failed to meet their burden of proof to establish adoption of the  
 9 Ordinance resulted in a violation of RCW 36.70A.130(1)(d) in regards to Land Use Policy  
 10 18.3.  
 11

- 12 • **LU 18.4 Preserve industrial districts for industrial use. Limit non-**  
 13 **industrial uses in industrial districts to those uses which complement or**  
 14 **support industrial development. This could include associated offices,**  
 15 **restaurants, warehouses, day care facilities, parks and recreational**  
 16 **facilities, and other similar uses. Such uses should be limited in size**  
 17 **and number so that they do not unduly deplete the industrial land base,**  
 18 **preempt the siting of industrial uses, or elevate land prices to levels that**  
 19 **deter industrial development.**

20 This policy requires that **industrial districts** be "preserved" for industrial use although  
 21 limited non-industrial uses are allowed. The residential use contemplated by the Ordinance  
 22 is clearly not industrial yet the record establishes the contemplated use must be located in  
 23 an industrial district.<sup>72</sup> Unless a permanent homeless encampment is determined to be  
 24 included in the limited non-industrial uses set forth in LU 18.4 then the Ordinance, on its  
 25 face, is inconsistent with and fails to implement Comprehensive Plan LU Policy 18.4.

26 LU Policy 18.4 allows uses which would complement or support industrial development.

27 Does the record establish that a permanent homeless encampment would complement or  
 28

29 <sup>68</sup> OMC 18.50.060A.2.e

30 <sup>69</sup> OMC 18.50.060B.2.

31 <sup>70</sup> OMC 18.50.060E.2.a-b. The Board takes official notice of the Olympia Municipal Code pursuant to WAC  
 32 242-03-630(4).

<sup>71</sup> OMC 18.48.040

<sup>72</sup> Exhibit 2, OMC 18.08.040, Table 8.01

1 support the surrounding industrial uses? The only evidence in the record to that effect  
 2 consists of conclusory statements provided by staff to the effect residents of the homeless  
 3 encampment would provide a **potential** employment resource.<sup>73</sup> Additionally, while the list  
 4 of exceptions in LU 18.4 is not exclusive, a permanent homeless encampment is not in *para*  
 5 *materia* with, or "similar to", the uses referenced in the policy.<sup>74</sup>  
 6

7 Based on the Record before the Board, allowance of a permanent homeless encampment in  
 8 an industrial district is not consistent with and fails to implement Land Use Policy 18.4. The  
 9 Petitioners have met their burden of proof to establish adoption of the Ordinance results in a  
 10 violation of RCW 36.70A.130(1)(d) in regards to Land Use Policy 18.4.  
 11

- 12
- 13 • **LU 18.5 Prohibit land uses in industrial districts which would be**  
 14 **incompatible with existing or potential industrial uses. Consider**  
 15 **providing notices on the title of property within a specified distance of**  
 16 **industrial districts to make existing and prospective landowners aware**  
 17 **of the nature of the industrial district, in an effort to minimize**  
**incompatible land uses and nuisance complaints.**

18 This policy establishes a requirement: "**Prohibit** land uses . . . which would be incompatible  
 19 with existing or potential industrial uses." There is evidence in the record that the industrial  
 20 uses in the area contemplated for the permanent homeless encampment generate dust,  
 21 noise, and truck traffic.<sup>75</sup> Dust, noise, and truck traffic are, in the Board's opinion, potentially  
 22 incompatible with a residential use. That observation is buttressed by the following policy,  
 23

24  
 25 <sup>73</sup> Exhibit 52, Attachment 6, pg. 2

26 <sup>74</sup> The only use listed in OMC 18.08.040 exhibiting any similar characteristics, although the similarities are  
 27 extremely tenuous, is Secure Community Transition Facilities. However, that type of use has been deemed to  
 28 be an essential public facility. The City did not elect to identify and site a permanent homeless encampment  
 as an EPF.

29 <sup>75</sup> Public hearing testimony and written submissions include the following: "Trucks will be backing up at 7:00  
 30 a.m. into the Hertz rental facility next door to Quixote Village.", Exhibit 37, pg. 2; "Mottman Industrial Park is a  
 31 light industrial park with activity 24/7. At midnight there are more than 100 trailers parked on the property  
 across the street . . .", Exhibit 37, pg. 3; "We have large trucks and equipment within Mottman which causes  
 32 (sic) noise and unsafe environments for Personal Housing.", Exhibit 47; Minutes of the June 6, 2011 Olympia  
 Planning Commission, pg. 5 of 13, statement of Olympia Community Services Manager Steve Friddle: "It's  
 more likely that impacts from industrial uses could impact residents versus residents impacting industrial  
 uses."

1 LU 18.6a, which states, in effect, that residential areas are incompatible with industrial  
 2 areas: "Separate industrial areas from residential areas and other incompatible uses . . ."  
 3 While "areas" are distinct from parcels, such as the parcel contemplated for the permanent  
 4 homeless encampment and adjacent industrial parcels, the underlying concern remains:  
 5 industrial uses generate visual, auditory and air quality impacts which LU 18.6a impliedly  
 6 takes into account in concluding there is an incompatibility between the two. Finally, it is  
 7 also significant that OMC18.08.060(C)(2)(d) prohibits all residential uses in the light  
 8 industrial district other than those listed in OMC 18.08.040, Table 8.01.<sup>76</sup> That prohibition  
 9 again underscores the concern regarding incompatibility.  
 10

11  
 12 Based on the Record before the Board, allowance of a permanent homeless encampment in  
 13 an industrial district is not consistent with and fails to implement Land Use Policy 18.5. The  
 14 Petitioners have met their burden of proof to establish adoption of the Ordinance results in a  
 15 violation of RCW 36.70A.130(1)(d) in regards to Land Use Policy 18.5.  
 16

- 17 • **LU 18.6 Require industrial development to be designed, built,**  
 18 **landscaped, operated, and maintained in a way that will ensure that it will**  
 19 **be a good neighbor.**
  - 20 a. **Separate industrial areas from residential areas and other**  
 21 **incompatible uses by buffers, landscaped parking areas, open space**  
 22 **areas, and/or transitional commercial uses to minimize adverse impacts**  
 23 **on adjoining uses.**
  - 24 b. **Locate and design industrial uses which generate significant noise,**  
 25 **emissions, odor, or heavy traffic so that impacts on surrounding uses**  
 26 **are minimized. Standards for industrial uses must protect residential**  
 27 **areas from significant noise, pollution, and glare.**
  - 28 c. **Restrict the height of buildings in industrial districts within one**  
 29 **hundred feet of the district boundary to no more than twenty-five percent**  
 30 **higher than the maximum height allowed in the adjoining district.**
  - 31 d. **Require that the site access and internal circulation system for**  
 32 **industrial areas minimize traffic through residential areas and busy**  
**commercial . . .**

<sup>76</sup> The listed exceptions are: (1) Living or residential quarters as an accessory use such as guards' quarters in large establishments where such quarters are customarily provided for security and /or insurability of the premises, (2) Child Day Care Centers and (3) Secure Community Transition Facilities (the latter being designated an EPF).

1 LU 18.6 establishes policies for industrial uses themselves: "Require industrial development  
 2 to . . ."; "Separate industrial areas from . . ."; "Locate and design industrial uses . . ." First of  
 3 all, the Ordinance does not involve an industrial use but rather a type of residential use. A  
 4 proposed industrial use would be subject to development regulations designed to implement  
 5 Policy 18.6. There is no aspect of the Ordinance which precludes attainment of this  
 6 Comprehensive Plan policy; that is, there is no apparent inconsistency between the policy  
 7 and the Ordinance. Policy 18.6 can be implemented as required by RCW 36.70A.130(1)(d),  
 8 whether or not the Ordinance exists.  
 9

10 The subsection of the Policy upon which the Petitioners focused was LU 18.6a which  
 11 provides for separation of industrial areas from residential areas. Although the Olympia  
 12 Municipal Code does not appear to include a definition of the term "area", the following  
 13 definitions do appear in OMC 18.02.180<sup>77</sup>:  
 14

15 Parcel. A parcel of land under one ownership that has been legally subdivided or  
 16 combined and is shown as a single parcel on the most recent equalized  
 17 assessment roll.

18 District or Zone. A specific **area** designated on the official zoning map of the city  
 19 as one of the use districts as provided for in this title; such area is subject to all  
 20 the requirements and regulations applicable to such district. (emphasis added)

21 In the context of this matter, Petitioners urge the Board to apply the separation policy to  
 22 parcels: that is, separate the intended homeless encampment parcel from adjoining parcels.  
 23 However, it appears to the Board, and it so finds, that LU 18.6a refers to the separation of  
 24 areas, as distinct from parcels.  
 25

26 The Petitioners have failed to meet their burden of proof to establish adoption of the  
 27 Ordinance resulted in a violation of RCW 36.70A.130(1)(d) in regards to Land Use Policy  
 28 18.6.  
 29  
 30  
 31  
 32

<sup>77</sup> The Board has taken official notice of the Olympia Municipal Code pursuant to WAC 242-03-630(4).

1 **Conclusion**

2 The Board concludes Petitioners have carried their Issue 1 burden of proof in demonstrating  
3 the City of Olympia's action in adoption of Ordinance No. 6771 violated RCW  
4 36.70A.130(1)(d) as the Ordinance is not consistent with and fails to implement  
5 Comprehensive Plan Policies LU 18.4 and LU 18.5.  
6

7 While the City might very well achieve its laudable goal to site a permanent homeless  
8 encampment, the manner in which it sought to do so resulted in a violation of RCW  
9 36.70A.130(1)(d).  
10

11 **Issue 2:**

12 Whether that portion of Ordinance No. 6771 adopting a text amendment to City  
13 development regulations authorizing a permanent "County Homeless  
14 Encampment," a high-density residential use, as a conditional use on Thurston  
15 County-owned property within the City's Light Industrial ("LI") zoning district,  
16 violates RCW 36.70A.040(3), RCW 36.70A.130(1)(d), and implementing  
17 regulations WAC 365-196-500, -800, and -801, in that such amendment results  
18 in internal inconsistency within the development regulations for the Light  
19 Industrial Zone, OMC Ch. 18.08.

20 **Positions of the Parties**

21 Petitioners' Issue 2 asserts the Ordinance adopts inconsistent development regulations.  
22 They reference Olympia Municipal Code (OMC) 18.08.020 (Industrial Districts), which  
23 includes the following general and specific purposes:  
24

25 A. 2. To protect residential and other non-industrial areas from adverse and  
26 damaging impacts emanating from industrial type activities;

27 A. 3. To protect industrial areas from other uses that may interfere with the purpose  
28 and efficient operation of industrial areas.

29 B. 1. [The purpose of] the Light Industrial/commercial (LI/C) District. This district is  
30 intended to permit light industrial activities involved in the manufacture, repair, or  
31 servicing of goods or products which are conducted with minimal adverse impact on  
32 the environment and the general community;



1 It is Petitioners' contention the Ordinance's allowance of a residential homeless  
 2 encampment in an industrial park does not constitute "industrial activity" as envisioned by  
 3 OMC 18.08.020 (B)(1). They again reference the record which they state establishes  
 4 existing industrial operations at the Mottman Industrial Park generate noise, dust and truck  
 5 traffic. They argue the buffering contemplated by the Ordinance fails to comply with OMC  
 6 18.08.020(A) protection requirements. Petitioners conclude by opining the text amendments  
 7 are facially internally inconsistent with the referenced OMC 18.08.020 (A) and (B)  
 8 development regulations.<sup>78</sup>

10  
 11 The City first argues Petitioners lack standing to raise a challenge under RCW 36.70A  
 12 .040(3) and RCW 36.70A.130(1)(d) to assert internal development regulation  
 13 inconsistencies. Beyond that, the City states the development regulation purpose  
 14 statements of Olympia Municipal Code (OMC) 18.08.020 are not development regulations  
 15 as they do not constitute controls placed on development or land use activities – RCW  
 16 36.70A.030(7).<sup>79</sup>

18 Further, even if one were to assume OMC 18.08.020 was a development regulation, the City  
 19 argues there is no inconsistency with the Ordinance. It is the City's position the referenced  
 20 Municipal Code section and the Ordinance both contemplate industrial uses, and that both  
 21 contemplate avoidance or minimization of conflicts between industrial and other uses.<sup>80</sup>

23  
 24 **Board Analysis and Findings**

25 It has long been held, by both the Courts and the Boards, that the GMA does not require  
 26 issue specific standing. Rather, the GMA requires only that a petitioner's participation raise  
 27 a subject or topic of concern or controversy which is reasonably related to the issues  
 28  
 29  
 30

31 <sup>78</sup> Petitioners' Prehearing Brief at 13, 14

32 <sup>79</sup> Respondent's Prehearing Brief at 13

<sup>80</sup> Id. at 14

1 presented for resolution to the Board. See *Wells v. WWGMHB*<sup>81</sup>, *Skagit Hill Recycling v.*  
 2 *Skagit County*,<sup>82</sup> and *Butler v. Lewis County*.<sup>83</sup> Beyond that, Petitioners specifically raised  
 3 the question of a development regulation inconsistency in correspondence addressed to the  
 4 City Council.<sup>84</sup> The City's observation is not well taken.

5  
 6 Furthermore, as to the merits of Petitioners' allegation regarding development regulation  
 7 inconsistency, the Board agrees with the City that the general and specific purposes  
 8 referenced by Petitioners do not constitute controls placed on development or land use  
 9 activities. Development regulations are defined by RCW 36.70A.030(7):  
 10

11 "Development regulations" or "regulation" means the controls placed on  
 12 development or land use activities by a county or city, including, but not limited  
 13 to, zoning ordinances, critical areas ordinances, shoreline master programs,  
 14 official controls, planned unit development ordinances, subdivision ordinances,  
 15 and binding site plan ordinances together with any amendments thereto. A  
 16 development regulation does not include a decision to approve a project permit  
 17 application, as defined in RCW 36.70B.020, even though the decision may be  
 18 expressed in a resolution or ordinance of the legislative body of the county or  
 19 city.

20 OMC 18.08.020 merely sets out precatory purposes of the Light Industrial District chapter of  
 21 the City's development regulations. Those purposes do not constitute controls placed on  
 22 development or land use activity as contemplated by RCW 36.70A.030(7). Rather, they  
 23 express in general terms the intent, the design, or **purpose**, of the chapter. Petitioners are  
 24 unable to establish, at least in the context of this matter, a violation of the chapter's purpose  
 25 statements.  
 26

27  
 28 <sup>81</sup> 100 Wn. App. 657 (2000): To achieve participation standing under RCW 36.70A.280(2)(b) a person must  
 29 have participated during the local government process regarding the matter on which the review is being  
 30 requested. The term "matter" is not equivalent to the term "issue", nor is it equivalent to the term "enactment".  
 The word "matter" refers to a "subject or topic of concern or controversy."

31 <sup>82</sup> Case No. 09-2-0011, Order on Motions, at 3 (July 20, 2009)

32 <sup>83</sup> Case No. 99-2-0027c (FDO, 6-30-00): In order to acquire standing a petitioner's participation must be  
 reasonably related to the issue presented to a GMHB. A showing of some nexus between the participation  
 and the issues raised is required.

<sup>84</sup> See Exhibit 54, Attachment 3, August 15 2011 letter from Petitioners' counsel, pg. 3, footnote 1

1 **Conclusion**

2 The Board concludes Petitioners have failed to carry their Issue 2 burden of proof in  
3 demonstrating the City of Olympia's action in adoption of Ordinance No. 6771 violated RCW  
4 36.70A.130(1)(d).

5  
6 **Issue 3:**

7 Whether that portion of Ordinance No. 6771 adopting a text amendment to City  
8 development regulations authorizing a permanent "County Homeless  
9 Encampment," a high-density residential use, as a conditional use on Thurston  
10 County-owned property within the City's Light Industrial ("LI") zoning district,  
11 substantially interferes with the goals and policies of the Growth Management  
12 Act, RCW 36.70A.020, specifically goals (4) (Housing), (5) (Economic  
13 Development), (6) (Property Rights), and (11) (Citizen Participation and  
14 Coordination), in that such amendment was intentionally drafted, reviewed, and  
15 adopted so as to allow the proposed permanent homeless encampment on a  
16 single piece of pre-determined County-owned property within the Mottman  
17 Industrial Park without resort to the annual comprehensive plan amendment  
18 process which would have provided consideration of other suitable properties for  
19 proposed use.

18 **Applicable Law**

19 The Issue 3 RCW 36.70A.020 Goals with which Petitioners allege the City's action  
20 substantially interfere are set forth below:

21  
22 (4) Housing. Encourage the availability of affordable housing to all economic  
23 segments of the population of this state, promote a variety of residential densities  
24 and housing types, and encourage preservation of existing housing stock.

25 (5) Economic development. Encourage economic development throughout the  
26 state that is consistent with adopted comprehensive plans, promote economic  
27 opportunity for all citizens of this state, especially for unemployed and for  
28 disadvantaged persons, promote the retention and expansion of existing  
29 businesses and recruitment of new businesses, recognize regional differences  
30 impacting economic development opportunities, and encourage growth in areas  
31 experiencing insufficient economic growth, all within the capacities of the state's  
32 natural resources, public services, and public facilities.

(6) Property rights. Private property shall not be taken for public use without just

1 compensation having been made. The property rights of landowners shall be  
2 protected from arbitrary and discriminatory actions.

3 (11) Citizen participation and coordination. Encourage the involvement of citizens  
4 in the planning process and ensure coordination between communities and  
5 jurisdictions to reconcile conflicts.

6 **Positions of the Parties**

7 The Petitioners' argument in support of their request for a determination of invalidity is  
8 grounded solely in their position that the City, at the behest of Intervenor and Thurston  
9 County, tailored its process to "achieve a specific, pre-ordained result simply to further a  
10 public good."<sup>85</sup> In other words, the amendatory process was undertaken with the goal of  
11 ultimate approval of the establishment of a permanent homeless facility on a specific  
12 property located in the Mottman Industrial Park. Petitioners state a determination of the  
13 appropriate location for such a facility "must be accomplished through [GMA] community  
14 planning", as opposed to undertaking an amendatory process with a predetermined, albeit  
15 worthy, goal in mind.<sup>86</sup>  
16  
17

18 The City responds with the observation that Petitioners failed to support their allegations of  
19 substantial goal interference. They state that Petitioners cited neither case law nor Growth  
20 Management Hearings Board cases in support of their request.<sup>87</sup>  
21  
22

23 **Board Analysis and Findings**

24 Invalidity is a discretionary remedy available to the Board when it determines the continued  
25 validity of the challenged legislative enactment would substantially interfere with the  
26 fulfillment of GMA goals.<sup>88</sup>  
27

28 RCW 36.70A.302(1)(b), in part, states:  
29  
30

31 <sup>85</sup> Petitioners' Prehearing Brief at 14

32 <sup>86</sup> *Id.*

<sup>87</sup> Respondent's Prehearing Brief at 14

<sup>88</sup> *Weyerhaeuser et al v. Thurston County*, Amended FDO, Case No. 10-2-0020c

1 (1) A board may determine that part or all of a comprehensive plan or  
2 development regulation are invalid if the board:

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

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

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

12 The four GMA goals referenced by the Petitioners in their invalidity request are Housing  
13 (Goal 4); Economic Development (Goal 5), Property Rights (Goal 6), and Citizen  
14 Participation and Coordination (Goal 11). However, they have not demonstrated that the  
15 Comprehensive Plan/development regulation inconsistency substantially interferes with the  
16 cited GMA goals. They presented no argument tying this lack of consistency to any  
17 particular GMA goal, failing to even reference Goals 4, 5 and 6 in their prehearing brief.  
18 Goal 11 is only indirectly implicated. Rather, they merely allege substantial interference  
19 resulting from the process of tailoring amendments to achieve a desired outcome. In the  
20 absence of proof of such substantial interference with GMA goals, the Board declines to  
21 impose invalidity.

22 **Conclusion**

23 The Board concludes Petitioners have failed to carry their burden of proof in demonstrating  
24 the City of Olympia's action in adoption of Ordinance No. 6771 substantially interferes with  
25 realization of RCW 36.70A.020's Goals (4) (Housing), (5) (Economic Development), (6)  
26 (Property Rights), and (11) (Citizen Participation and Coordination).  
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1 **VI. ORDER**

2 The Petitioners' Issue 1 and Issue 2 alleged violations of RCW 36.70A.040(3), WAC 396-  
3 196-500, WAC 396-196-800 and WAC 396-196-801 are dismissed.

4  
5 The Petitioners have failed to meet their Issue 1 burden of proof to sustain alleged violations  
6 of RCW 36.70A.130(1)(d) as to Comprehensive Plan Land Use Policies LU 18.1, LU 18.3  
7 and LU 18.6, their Issue 2 burden of proof to sustain alleged violations of RCW  
8 36.70A.130(1)(d), and their Issue 3 burden of proof to establish the City's action substantially  
9 interferes with realization of RCW 36.70A.020's Goals (4) (Housing), (5) (Economic  
10 Development), (6) (Property Rights), and (11) (Citizen Participation and Coordination).  
11

12  
13 Petitioners have met their burden of proof to sustain their Issue 1 alleged violations of RCW  
14 36.70A.130(1)(d) as to Comprehensive Plan Land Use Policies LU 18.4 and LU 18.5.

15  
16 Based upon the foregoing, the City of Olympia is ordered to bring its development  
17 regulations into compliance with the Growth Management Act pursuant to this decision  
18 within 120 days. The following schedule for compliance shall apply:


19

20 Compliance Due on identified areas of noncompliance	August 28, 2012
21 Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	September 11, 2012
22 Objections to a Finding of Compliance	September 25, 2012
23 Response to Objections	October 2, 2012
24 Compliance Hearing – Telephonic 25 1 800 704-9804 pin 7757643#	October 10, 2012 10:30 a.m.

26  
27 SO ORDERED this 4th day of May, 2012.

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29 William P. Roehl, Presiding Officer

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Nina Carter, Board Member

4 **Concurrence of Board Member Raymond L. Paoella**

5 I concur with the ultimate result reached by the majority in this case. I write separately  
6 regarding Comprehensive Plan Policy LU 18.4 (entitled "Preserve industrial districts for  
7 industrial use"), which is a part of Petitioners' Legal Issue 1. I conclude that Petitioners failed  
8 to satisfy their burden to prove "inconsistency" as to Policy LU 18.4 in light of the  
9 presumption of validity and the City's findings of fact. Further, Policy LU 18.4 itself  
10 contemplates exemptions for non-industrial uses in industrial districts which complement or  
11 support industrial development. The City Council found that the ordinance does not  
12 discourage industrial uses because it applies to County-owned land, and it is highly unlikely  
13 that there will be any industrial uses on property the County owns. Also, there is the  
14 evidence in the record showing that this land was not considered as industrial land for  
15 purposes of the City's most recent Buildable Lands Report and this proposal may support  
16 industrial uses. As to Comprehensive Plan Policy LU 18.4, I conclude that there is  
17 substantial evidence in the record to support the City Council's findings of fact relating to  
18 Policy LU 18.4.  
19  
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23

  
Raymond Paoella, Board Member

24 Note: This is a final decision and order of the Growth Management Hearings Board issued  
25 pursuant to RCW 36.70A.300.<sup>89</sup>  
26  
27  
28

29 <sup>89</sup> Should a party choose to do so, a motion for reconsideration must be filed with the Board and served on all  
30 parties within ten days of mailing of the final order. WAC 242-3-830(1), WAC 242-3-840.  
31 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days  
32 as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970.  
It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth  
Management Hearings Board is not authorized to provide legal advice.

2

**BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
WESTERN WASHINGTON REGION**

Case No. 11-2-0011

John Peranzi, Vallie Jo Fry and Tony and Isobel Cairone v. City of Olympia

**DECLARATION OF SERVICE**

I, VANESSA SMITH, under penalty of perjury under the laws of the State of Washington, declare as follows:

I am the Administrative Assistant for the Growth Management Hearings Board. On the date indicated below a copy of the FINAL DECISION AND ORDER in the above-entitled case was sent to the following through the United States postal mail service:

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DATED this 4<sup>th</sup> day of May, 2012.

  
Vanessa Smith, Administrative Assistant