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**State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

LOON LAKE PROPERTY OWNERS
ASSOCIATION, LOON LAKE DEFENSE
FUND, WILLIAM SHAWL, and JANICE
SHAWL, LARSON BEACH NEIGHBORS, and
JEANIE WAGENMAN

Petitioner,

DEPARTMENT OF ECOLOGY,

Intervenor,

v.

STEVENS COUNTY,

Respondent.

Case No. 03-1-0006c

ORDER ON MOTIONS FROM CASE
NOS. 00-1-0016, 03-1-0003, AND
03-1-0006

I. BACKGROUND

1. In EWGMHB Case No. 00-1-0016 the following events have occurred:
 - a. On July 11, 2002 Stevens County adopted Resolution No. 75-2000 a revised Stevens County Interim Critical Areas Designations and Regulations (ICAO).
 - b. On July 20, 2000 Larson Beach Neighbors and Jeanie Wagenman (collectively LBN) filed a Petition for Review of the ICAO.

1 c. On July 8, 2002 the Board issued its Final Decision and Order finding
2 parts of the ICAO non-compliant.

3 d. On July 10, 2003 the Board issued its Second Order of Continued Non--
4 Compliance.

5 e. On September 9, 2003 Stevens County attempted to come into
6 compliance by adopting Resolution No. 109-2003 and amending the ICAO (ICAO
7 Amendment).

8 f. On November 14, 2003 the Board issued its Order on Third Compliance
9 Hearing, finding continued non-compliance.

10 2. In EWGMHB Case No. 03-1-0003 the following events have occurred:

11 a. On March 4, 2003 Stevens County adopted Resolution No. 32-2003
12 adopting Critical Areas Ordinance (CAO).

13 b. On May 16, 2003 Larson Beach Neighbors and Jeanie Wagenman filed
14 a Petition for Review of the CAO.

15 c. On August 19, 2003 the Board granted intervention status to
16 Department of Ecology.

17 3. In EWGMHB Case No. 03-1-0006 the following events have occurred:

18 a. On September 9, 2003 Stevens County adopted Resolution No. 109-
19 2003 amending the ICAO (ICAO Amendment).

20 b. On November 10, 2003 Loon Lake Property Owners Association, Loon
21 Lake Defense Fund and William & Janice Shawl (collectively LLPOA) filed a Petition for
22 Review of the ICAO Amendment.

23 c. On January 27, 2003 the Board orally (with written order to follow)
24 granted to Petitioners non-compliance summary judgment on Public Participation and
25 Critical Area Protection/Best Available Science issues.
26

1 **II. CONSOLIDATION**

2 On January 27, 2004 the Board consolidated Case No. 00-1-0016, Case No. 03-1-
3 0003 and Case No. 03-1-0006 with written order of consolidation to follow. That Order was
4 entered on February 2, 2004.

5 **III. MOTIONS OF THE PARTIES**

6 1. In Case No. 03-1-0006 the County moved for dismissal on December 29,
7 2003.

8 2. In Case No. 03-1-0006 Petitioners LLPOA moved to supplement the record
9 and for non-compliance and invalidity summary judgment on Public Participation and Critical
Area Protection/ Best Available Science issues.

10 3. In Case No. 03-1-0003 Petitioners LLPOA orally moved for intervention status
11 during the January 27, 2004 hearing on the motions in Case No. 03-1-0006.

12 4. In Case No. 00-1-0016 Petitioners LLPOA orally moved for intervention status
13 during the January 27, 2004 hearing on the motions in Case No. 03-1-0006.

14 **IV. FINDINGS**

15 1. EWGMHB Case No. 03-1-0006:

16 a. County Motion to Dismiss. Petitioners filed a Petition for Review of the
17 ICAO Amendment development regulation in this case rather than seeking to intervene in
Case No. 00-1-0016.

18 b. Petitioners Motion to Supplement. Items 10 through 13 in Petitioners'
19 Index pertain to minutes of the September 9, 2003, BOCC meeting and drafting of the ICAO
20 Amendment. These items are necessary and of substantial assistance to the Board in
21 reaching decisions herein. Petitioners' motion concerning Items 14 through 19 was
22 withdrawn at the hearing.

23 c. Non-compliance Public Participation Summary Judgment. The County
24 did not notify the Planning Councils, the Planning Commission or the public prior to 9/9/03,
25 of the provisions of the ICAO Amendment, nor draft the ICAO Amendment until after
26

1 9/9/03. The BOCC later signed and adopted the actual provisions of the ICAO Amendment
2 without submitting the proposed amendment to the County's Public Participation process.

3 d. Non-compliance Critical Areas Protection/Best Available Science
4 Summary Judgment. The County in its Record did not provide best available science or
5 any science supporting the replacement of set width standard setbacks with site specific "no
6 harm" buffers in its ICAO Amendment.

7 e. Invalidity Public Participation Summary Judgment. The Board makes
8 no findings at this time concerning substantial interference with the goals of the GMA.

9 f. Invalidity Critical Areas Protection/Best Available Science Summary
10 Judgment. The Board makes no findings at this time concerning substantial interference
11 with the goals of the GMA.

12 2. In EWGMHB Case No. 00-1-0016:

13 a. a. Motion to Intervene. Respondent County argued in EWGMHB Case
14 No. 03-1-0006 that Petitioners LLPOA should have intervened in Case No. 00-1-0016 rather
15 than filing a separate petition for review. Petitioners LLPOA countered by moving for
16 intervention. Respondent County did not object to the intervention of Petitioners LLPOA in
17 this case.

18 3. In EWGMHB Case No. 03-1-0003:

19 a. a. Motion to Intervene. Respondent County argued in EWGMHB Case
20 No. 03-1-0006 that Petitioners LLPOA should have intervened in EWGMHB Case No. 03-1-
21 0003 rather than filing a separate petition for review. Petitioners LLPOA countered by
22 moving for intervention in EWGMHB Case No. 03-1-0003. Respondent County did not
23 object to the intervention of Petitioners LLPOA in this case.

24 **V. CONCLUSIONS**

25 1. In EWGMHB Case No. 03-1-0006:

26 a. Motion to Dismiss. Petitioners LLPOA have the option of filing a
separate petition for review of an amended development regulation or seeking intervention
in an existing case. The existence of a pending Growth Management Hearings Board case

1 involving a development regulation does not bar anyone from seeking review of the
2 amendment of that development regulation through a separate petition for review.

3 b. Motion to Supplement Record. Items 10 through 13 in Petitioners'
4 Supplemental Index of the Record are necessary and of substantial assistance to the Board
5 in its deliberations in this matter.

6 c. Non-compliance Public Participation Summary Judgment. The Board
7 considered the County's Record, Items 10 through 13 in Petitioners' Supplemental Record
8 and the pleadings herein in reaching its decision. The County failed to provide notice that
9 was reasonably calculated to inform the public of the provisions of the ICAO Amendment to
10 interested parties and the public in violation of RCW 36.70A.035, and failed to follow the
11 County's Public Participation Policy, requiring broad dissemination of proposals and
12 amendments. There are no genuine issues of material fact and Petitioners are entitled to
13 judgment as a matter of law on this issue.

14 d. Non-compliance Critical Areas Protection/Best Available Science
15 Summary Judgment. The Board considered the County's Record, Items 10 through 13 in
16 Petitioners' Supplemental Record, Resolution No. 109-2003 and the attached ICAO
17 Amendment including Amendment 2 and the pleadings herein in reaching its decision. The
18 ICAO Amendment has vague unenforceable "ad hoc" standards that do not provide
19 protection of critical areas and riparian areas as required by RCW 36.70A.060(2).
20 Amendment 2 to the ICAO does not contain any best available science or science
21 references supporting the replacement of set width standard buffers with site specific "no
22 harm" buffers and therefore the County has not included the best available science in
23 developing the Amendment. Further, the County has failed to explain its departure from
24 science based recommendations as required by WAC 365-195-905. There are no genuine
25 issues of material fact and Petitioners are entitled to judgment as a matter of law on this
26 issue.

e. Invalidity Public Participation Summary Judgment. The Board shall
defer judgment on this issue.

1 f. Invalidity Critical Areas Protection/Best Available Science Summary
2 Judgment. The Board shall defer judgment on this issue.

3 2. In EWGMHB Case No. 00-1-0016:

4 a. Motion to Intervene. As Respondent County has argued that
5 Petitioners LLPOA should intervene and has not objected to LLPOA intervention and as
6 LLPOA is an interested party, Petitioners LLPOA should be allowed to intervene in this case.

7 3. In EWGMHB Case No. 03-1-0003:

8 a. Motion to Intervene. As Respondent County has argued that
9 Petitioners LLPOA should intervene and has not objected to LLPOA intervention and as
10 LLPOA is an interested party, Petitioners LLPOA should be allowed to intervene in this case.

11 **VI. ORDER**

12 1. In EWGMHB Case No. 03-1-0006:

13 a. The County's December 24, 2003 motion to dismiss the Petition
14 for Review in this case as an unauthorized petition for review of an
15 amended development regulation is denied.

16 b. The Petitioners LLPOA motion to supplement the record as to
17 Items 10 through 13 in Petitioners' Index of Supplemental Record is
18 granted and denied as to Items 14 through 19.

19 c. Petitioners LLPOA summary judgment motions for non-
20 compliance on public participation issues and critical areas
21 protection/best available science issues are granted.

22 d. Petitioners LLPOA summary judgment motions for invalidity on
23 public participation issues and critical areas protection/best available
24 science issues are denied.

25 2. In EWGMHB Case No. 00-1-0016 Petitioners LLPOA et al., motion to
26 intervene in this case is granted.

3. In EWGMHB Case No. 03-1-0003 Petitioners LLPOA et al., motion to
intervene in this case is granted.

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4. Issues remaining for decision will be determined at a subsequent telephonic hearing.

SO ORDERED this 6th day of February 2004.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

D.E. "Skip" Chilberg, Board Member

Dennis Dellwo, Board Member

Judy Wall, Board Member