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

CONCERNED FRIENDS OF FERRY COUNTY
and DAVID ROBINSON, RIPARIAN OWNERS
OF FERRY COUNTY and SHARON
SHUMATE,

Petitioner,

v.

FERRY COUNTY,

Respondent.

Case No. 04-1-0007c

PREHEARING ORDER AND ORDER
ON CONSOLIDATION

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I. PROCEDURAL HISTORY

On July 6, 2004, CONCERNED FRIENDS OF FERRY COUNTY and DAVID ROBINSON, by and through their representative, David Robinson, filed a Petition for Review.

On August 10, 2004, the Board held a telephonic Prehearing conference. Present were Dennis Dellwo, Presiding Officer, and Board Members Judy Wall and D.E. "Skip" Chilberg. Present for Petitioner was David Robinson. Present for Respondent was Steve Graham.

The legal issues, proposed schedule and other procedural matters were reviewed.

On August 10, 2004, the Board sent a letter to the parties named above advising the Board was considering consolidation of EWGMHB Case No. 04-1-0006, RIPARIAN OWNERS OF FERRY COUNTY and SHARON SHUMATE v. FERRY COUNTY with EWGMHB Case No. 04-1-0007, CONCERNED FRIENDS OF FERRY COUNTY and DAVID ROBINSON v. FERRY COUNTY and asking that objections be provided to the Board no later than August 17, 2004.

1 On August 17, 2004, the Board received objections from Petitioners, Riparian Owners
2 of Ferry County and Sharon Shumate.

3 Upon review of the issues in these matters, the Board believes the cases are similar
4 enough to warrant such consolidation. The briefing and hearing schedule in this matter is
5 provided below.

6 II. BRIEFING AND EXHIBITS

7 Briefs of Petitioner and Respondent shall not exceed forty (40) pages. The
8 optional Reply Brief shall not exceed twenty-five (25) pages unless authorized
9 by the Board. An original and 3 copies of all documents must be filed with the
10 Board as directed by WAC 242-02 and a copy served on opposing counsel or
11 party, as is appropriate, by 5:00 p.m. on the day indicated on the Schedule.
12 Board Originals and exhibits should be single sided. Board Member copies and
13 exhibits should be single-sided. Originals and Board Copies must be two hole,
14 top center punched, on 8 ½" x 11" paper.

14 III. SCHEDULE

15 <u>Due date</u>	15 <u>Event</u>
16 Aug. 20, 2004	Prehearing Order issued
16 Aug. 25, 2004	Index of Record due
17 Aug. 27, 2004	Deadline for Motions (Dispositive and Supplementation or Addition to Record and Memorandum in Support, with exhibits)
18 Sept. 8, 2004	Deadline for Response to Motions (with exhibits)
18 Sept. 15, 2004	Deadline for Rebuttal to Response to Motions (optional)
19 Sept. 22, 2004	MOTION HEARING: 10:00 A.M. Telephonically-Parties will call 360-709-4803 enter the pin code 1919 and the # sign. Ports are reserved Mr. Robinson, Ms. Shumate and Mr. Graham.
20 Sept. 29, 2004	Motion Order issued
21 Oct. 20, 2004	Deadline for Petitioner's Hearing on the Merits Brief with exhibits **<u>BRIEFS MUST BE LABELED: HEARING ON THE MERITS BRIEF</u>**
22 Nov. 10, 2004	Deadline for Respondent's Hearing on the Merits Brief with exhibits **<u>BRIEFS MUST BE LABELED: HEARING ON THE MERITS BRIEF</u>**
23 Nov. 17, 2004	Deadline for Petitioner's Hearing on the Merits Reply Brief **<u>BRIEFS</u> <u>MUST BE LABELED: HEARING ON THE MERITS BRIEF</u>
24 Nov. 23, 2004	HEARING ON MERITS: 10:00 A.M. at Northern Inn, 852 S. Clark, Republic, WA

1 The FINAL DECISION AND ORDER will be issued by the 180-day deadline of
2 January 3, 2005

3 Briefs shall be submitted by the date and in the manner set forth in the
4 Schedule. The parties shall clearly specify which legal issues, as set forth below,
5 are being addressed in their briefs.

6 The parties are reminded that their briefs and arguments must be confined
7 to the legal issues set forth herein and that issues not addressed in the brief will
8 be deemed to have been abandoned and cannot be resurrected in Reply Briefs or
9 in oral argument at the Hearing on the Merits.

10 IV. WITNESS LIST

11 Only under extraordinary circumstances is witness testimony allowed.

12 V. INDEX

13 The Index: The Respondent provides the parties and the Board with the Index of
14 the record. All documents considered by the County in considering the challenged actions
15 should be included in the Index. The Index replaces the need for discovery normally
16 associated with civil litigation. The Index should be all-inclusive and numbered
17 chronologically. The index of the record has not been provided. **The Index of Record is
18 due to the Board and the parties by August 13, 2004.**

19 Additions: The petitioners should review the Respondent's index promptly. Where it
20 is found that items are not included or were overlooked when the Respondent made its list,
21 the Petitioners should work with the Respondent to make the corrections. If the parties fail
22 to agree upon what should be included in the Index, the Petitioners may by motion seek to
23 add the missing items to the Index. If an addition to the record is agreed upon between the
24 parties or ordered by the Board, the additions will be treated as being part of the record
25 rather than as supplemental exhibits. The Respondent will amend its Index to include such
26 documents.

1 The moving party shall file any dispositive motion and supporting legal memoranda
2 (brief) by the date and in the manner stated in the Schedule. Copies of exhibits referenced
3 in the motion and legal memorandum shall be attached.

4 A party shall file a response brief to dispositive motions by the date and in the
5 manner stated in the Schedule. Copies of exhibits referenced in the response shall be
6 attached, unless the relevant exhibit was already attached to the moving party's brief.

7 A moving party may, at its option, file a reply brief.

8 **VII. PRESUMPTION OF VALIDITY, BURDEN AND STANDARD OF PROOF**

9 Pursuant to RCW 36.70A.320, comprehensive plans and development regulations,
10 and amendments thereto, adopted pursuant to the Act, are presumed valid upon adoption.
11 The burden is on the petitioner to demonstrate that any action taken by the respondent
12 jurisdiction is not in compliance with the Act.

13 The Board "shall find compliance with the Act, unless it determines that the
14 [County's] action[s are] clearly erroneous in view of the entire record before the Board and
15 in light of the goals and requirements of the [GMA]." RCW 36.70A.320(3). For the Board to
16 find the County's actions clearly erroneous, the Board must be "left with the firm and
17 definite conviction that a mistake has been made." Dept. of Ecology v. PUD 1, 121 Wn.2nd
18 179, 201 (1993).

19 Pursuant to RCW 36.70A.300, the Board must issue a Final Decision and Order within
20 one hundred and eighty days of receipt of a petition for review. However, the Board may
21 extend the time period for issuing an FDO in order to allow the parties adequate time to
22 achieve settlement. Extensions of up to ninety days are authorized. The parties must
23 request such an extension by motion and file it with the Board no later than seven days
24 before the scheduled hearing on the merits.

25 **VIII. FILING OF EXHIBITS**

26 Only exhibits referenced in a motion, brief, response or reply need to be filed with
the Board, by the date and in the manner stated in the Schedule above.

1 Exhibits should be numbered according to Index number or supplemental exhibit
2 number. When filing response or reply briefs, the parties need only refer to exhibits
3 previously submitted, including those appended to Motions briefs, rather than submitting
4 duplicates.

5 Copies of exhibits from the Record will be distributed to all Board members upon
6 receipt if the exhibits have not been objected to, if they have been stipulated as admissible
7 by the parties, or if the presiding officer has determined they are admissible as
8 supplemental or additional exhibits.

9 IX. STATEMENT OF LEGAL ISSUES

10 1. Did the County fail to comply with RCW 36.70A.040, -.060, -.120, and -.172
11 and interfere substantially with GMA goals (RCW 36.70A.020) by not establishing adequate
12 vegetative buffers, by modifying standard riparian area widths through averaging down to
13 25 feet, and by allowing common line setbacks down to 25 feet or other adequate means
14 for protecting and regulating activities within riparian areas?

15 2. Do the Ferry County Development Regulations violate RCW 36.70A.040 (which
16 requires that development regulations be consistent with and implement the comprehensive
17 plan) because it adopts by reference Section 12 of the Ferry County Interim Ordinance
18 Number 93-02 "Designate and Classify Resource Lands and Critical Areas"? Do these
19 development regulations fail to utilize Best Available Science, and fail to provide adequate
20 standards for Planning Department Review, in violation of RCW 36.70A.172 and fail to
21 comply with RCW 36.70A.060(2) requirement that the regulations protect critical areas?

22 3. Is the County adoption of Riparian Area Protection as an attachment to
23 "Designate and Classify Resource Lands and Critical Areas" inconsistent with the definitions
24 of critical areas contained in RCW 36.70A.030(5)?

25 4. Did County adoption for Riparian Area Protection of standard-width riparian
26 area listing regulated activities fail to comply with RCW 36.70A.020(6) because it restricts
the use and management of private riparian lands?

1 5. Did the County adoption of its Riparian Area Protection fail to comply with the
2 requirement of RCW 36.70A.160 because it does not provide for purchase of corridors and
3 controls the resource development of the lands?

4 6. Did the County adoption of its Riparian Area Protection fail to comply with
5 RCW 36.70A.020(8) to maintain and enhance natural resource-based industries, by
6 including vegetation removal, harvesting, and vegetation disturbance on private riparian
7 lands as regulated activities?

8 7. Did the County fail to comply with 43.21.C.030(2)(b) and (c) because it did
9 not consider the economic long-term productivity of riparian lands when regulating activities
10 of harvesting, vegetation removal and alteration of riparian areas?

11 8. Did the County adoption of Riparian Area Protection fail to comply with RCW
12 36.70A.020(6) because it designates private riparian lands as fish and wildlife conservation
13 areas without just compensation?

14 9. Is the County adoption of its Riparian Area Protection Ordinance outside the
15 intent of the Planning Enabling Act RCW 3.670A.010 – Purpose and Intent for Growth
16 Management and its subsequent chapters of 36.70A, 36.70B, and 36.70C?

SO ORDERED this 20th day of August 2004.

EASTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD

Dennis Dellwo, Board Member

Judy Wall, Board Member

D.E. "Skip" Chilberg, Board Member