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

CONCERNED FRIENDS OF FERRY COUNTY
and DAVID ROBINSON

Petitioner,

v.

FERRY COUNTY,

Respondent.

Case No. 01-1-0019

FOURTH ORDER ON COMPLIANCE

I. PROCEDURAL BACKGROUND

On December 21, 2001, CONCERNED FRIENDS OF FERRY COUNTY and DAVID L. ROBINSON, by and through David L. Robinson, filed a Petition for Review.

On February 13, 2002, Respondent, Ferry County filed its Motion to Dismiss.

On February 26, 2002, Petitioners filed a Motion to Supplement the Record.

On March 28, 2002, the Board held a telephonic Motions Hearing. Present were Skip Chilberg, Presiding Officer, Dennis Dellwo and Judy Wall, Board Members, David Robinson was present for Petitioners and Stephen Graham was present for Respondent.

On April 5, 2002, an Order on Motions was entered allowing the Petitioners' request for additions to the Record and denying the County's motion to dismiss.

1 On April 11, 2002, the Board received from Ferry County Prosecuting Attorney,
2 Stephen Graham, a letter objecting to the Board's previously issued Motions Order. The
3 Motions Order was modified to correct the inadvertent errors.

4 On May 9, 2002, a final Hearing on the Merits was held in Republic, Washington.
5 Present were Presiding Officer, D. E. "Skip" Chilberg, and Board Members Dennis A. Dellwo
6 and Judy Wall. Present for Petitioners were David Robinson. Present for Respondent was
7 Stephen Graham, Deputy Prosecuting Attorney.

8 On June 14, 2002, the Board issued its Final Decision and Order directing Ferry
9 County to come into compliance within 120-days from the date of the Order. Ferry County
10 appealed the Board's Order to Superior Court. September 29, 2003, the Board received the
11 Order of Dismissal of the Superior Court case.

12 On September 30, 2003, the Board issued its Order Setting Compliance Hearing and
13 Briefing Schedule.

14 On October 31, 2003, the Board received a Motion for Continuance from
15 Respondent's attorney Steve Graham, asking the Board to move the compliance hearing
16 due to a scheduling conflict.

17 On November 3, 2003, the Board granted Respondent's request for continuance.

18 On November 24, 2003, the Board held a telephonic compliance hearing. Present for
19 the Board was Judy Wall and Dennis Dellwo. Present for Petitioners were David Robinson.
20 Present for Respondent was Stephen Graham. D. E. "Skip" Chilberg reviewed the recorded
21 hearing prior to participating in the following order.

22 On December 16, 2003, the Board issued its First Order on Compliance.

23 On April 8, 2004, the Board received Petitioner's Memo to the Board with Regards to
24 a 2nd Compliance Hearing and Motion for Sanctions from David L. Robinson.

25 On June 7, 2004, the Board held the second telephonic compliance hearing. Present
26 were Presiding Officer, D. E. "Skip" Chilberg, and Board Members Dennis A. Dellwo and

1 Judy Wall. Present for Petitioners were David Robinson. Present for Respondent was
2 Stephen Graham, Deputy Prosecuting Attorney.

3 On August 27, 2004, the Board issued its Second Order on Compliance.

4 On February 2, 2006, the Board received Petitioners Memo to the Board with
5 Regards to 3rd Compliance Hearing.

6 On March 8, 2006, the Board received Petitioners Request to the Board with Regards
7 to 3rd Compliance Hearing Briefing Schedule.

8 On March 13, 2006, the Board issued an Order Setting Compliance Hearing and
9 Briefing Schedule.

10 On March 28, 2006, the Board received Respondent's Statement of Action Taken and
11 Compliance Brief for 3rd Compliance Hearing.

12 On April 4, 2006, the Board received Petitioner's Reply Brief on Ferry County
13 Resolution NO. 2005-04 for 3rd Compliance Hearing.

14 On April 11, 2006, the Board held a telephonic compliance hearing. Present were
15 Presiding Officer John Roskelley and Board Member Dennis Dellwo. Board Member Judy
16 Wall was unavailable. Present for Petitioners was David Robinson. Present for Respondent
17 was Steve Graham. At the end of the telephonic compliance hearing the Board decided to
18 continue this matter to allow additional briefing by the parties.

19 On April 25, 2006, the Board received Respondent's Second Brief for 3rd Compliance
20 Hearing.

21 On May 2, 2006, the Board received Petitioner's 2nd Reply Brief on Ferry County
22 Resolution NO. 2005-04 for 3rd Compliance Hearing.

23 On May 18, 2006, the Board held a compliance hearing. Present were Presiding
24 Officer John Roskelley and Board Member Dennis Dellwo. Board Member Judy Wall was
25 unavailable. Present for Petitioners was David Robinson. Present for Respondent was Steve
26 Graham.

On June 14, 2006, the Board issued its Third Order on Compliance.

1 On June 27, 2006, the Board received Petitioner's Motion and Declaration for
2 Continuance of Briefing Due Dates asking the Board to move the briefing dates and
3 compliance hearing due to a scheduling conflict.

4 On September 6, 2006, the Board received Respondent's Motion for Continuance of
5 Compliance Hearing and Declaration in Support.

6 On September 14, 2006, the Board issued its Order Extending the briefing and
7 compliance schedule.

8 On November 14, 2006, the Board received Respondent's Motion for Continuance of
9 Compliance Hearing, and Declaration in Support.

10 On November 20, 2006, the Board received Petitioner's Response to Motion for
11 Continuance of Compliance in 01-1-0019, and Tentative Six-Month Schedule in 97-1-0018.

12 On November 20, 2006, the Board issued its Order Setting Compliance Hearing and
13 Briefing dates for all four Ferry County cases: 97-1-0018, 01-1-0019, 04-1-0007c, and 06-1-
0003.

14 On April 3, 2008, the Board issued its Order Setting Compliance Hearing and Briefing
15 Schedule.

16 On June 3, 2008, the Board held the compliance hearing. Present were John
17 Roskelley, Presiding Officer, Board Members Joyce Mulliken and Dennis Dellwo. Present for
18 Petitioners was David Robinson. Present for Respondent was Steve Graham.

19 II. STANDARD OF REVIEW

20
21 Comprehensive plans and development regulations (and amendments thereto)
22 adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon
23 adoption by the local government. RCW 36.70A.320. The burden is on the Petitioner to
24 demonstrate that any action taken by the respondent jurisdiction is not in compliance with
25 the Act. RCW 36.70A.320.

1 The Washington Supreme Court has summarized the standards for Board review of
2 local government actions under Growth Management Act. It was stated:

3 The Board is charged with adjudicating GMA compliance, and,
4 when necessary, with invalidating noncompliant comprehensive
5 plans and development regulations. RCW 36.70A.280, .302. The
6 Board "shall find compliance unless it determines that the action
7 by the state agency, county or city is clearly erroneous in view of
8 the entire record before the county, or city is clearly erroneous
9 in view of the entire record before the Board and in light of the
10 goals and requirements of [the GMA]." RCW 36.70A.320(3). To
11 find an action "clearly erroneous" the Board must be "left with
12 the firm and definite conviction that a mistake has been
13 committed." *Dep't of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d
14 179, 201, 849 P.2d 646 (1993).

15 The Board will grant deference to counties and cities in how they plan under Growth
16 Management Act. RCW 36.70A.3201. But, as the Court has stated, "local discretion is
17 bounded, however, by the goals and requirements of the GMA." *King County v. Central*
18 *Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.2d 133
19 (2000). It has been further recognized that "[c]onsistent with *King County*, and
20 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly
21 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and
22 goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn.App. 429, 444, 31
23 P.3d 28 (2001).

24 The Board has jurisdiction over the subject matter of the Petition for Review. RCW
25 36.70A.280(1)(a).

26 III. DISCUSSION

The Eastern Washington Growth Management Hearings Board (Board) requested a
fourth compliance hearing for Case No. 01-1-0019. The parties briefed the remaining issues

1 in this case, which are: (1) reliance on Ferry County's (County) pre-GMA Shorelines Master
2 Program (SMP) to regulate buffers on streams and lakes subject to the Shoreline
3 Management Act (SMA); (2) failure to protect agricultural resource lands of long-term
4 commercial significance; and (3) failure to use best available science (BAS) in various
5 provisions with respect to critical areas.

6 The Petitioners claim the County is out of compliance for failure to pass legislation to
7 comply with the Board's Final Decision and Order on the three remaining issues. The County
8 contends it has legislation currently in process to amend the Comprehensive Plan, Critical
9 Areas Ordinance and the development regulations ordinance for issue Nos. 1 and 3, but not
10 for issue No. 2, protection of agricultural lands. Both parties agree the County is still in non-
11 compliance with Case No. 01-1-0019.

12 VI. ORDER

13
14 Based upon the Board's review of the GMA, prior decisions of the Hearings Boards,
15 briefing and presentation by the parties at the compliance hearing, and having discussed
16 and deliberated on the matter, the Board enters a Finding of Non-Compliance and directs
17 the County to bring itself into compliance with the Board's Order and the GMA by
18 **December 8, 2008, 120 days**, from the date of this Order.

19 Respondent's Statement of Actions Take to Comply is due to the parties and Board
20 by **December 22, 2008**. Petitioners' compliance brief is due to the parties and Board by
21 **January 5, 2009**. Respondent's compliance brief is due to the parties and Board by
22 **January 20, 2009**. Petitioners' optional reply brief is due to the parties and Board by
23 **January 26, 2009**. The Compliance Hearing is scheduled for **February 2, 2009, from**
24 **10:00 a.m. to 1:00 p.m. The compliance hearing shall be limited to consideration**
25 **of the Legal Issues found noncompliant and remanded in this Order. The parties**
26 **will call: 360-407-3780 followed by 488728 and the # sign. Ports are reserved**

1 for Mr. Robinson and Mr. Graham. The parties shall file the original and four
2 copies. Board originals, Board Member copies and exhibits must be single sided,
3 two hole, top center punched, clearly tabbed, and accompanied by a table of
4 attached exhibits naming and describing each exhibit.

5 **SO ORDERED** this 9th day of June 2008.

6 EASTERN WASHINGTON GROWTH MANAGEMENT
7 HEARINGS BOARD

8 _____
9 John Roskelley, Board Member

10 _____
11 Dennis Dellwo, Board Member

12 _____
13 Joyce Mulliken, Board Member