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

CONCERNED FRIENDS OF FERRY COUNTY
and DAVID L. ROBINSON,

Petitioners,

v.

FERRY COUNTY,

Respondent.

Case No. 06-1-0003

FIRST ORDER ON COMPLIANCE

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I. PROCEDURAL HISTORY

On May 18, 2006, CONCERNED FRIENDS OF FERRY COUNTY and DAVID L. ROBINSON, filed a Petition for Review, by and through their representative, David Robinson.

On June 13, 2006, the Board held a telephonic Prehearing conference. Present were, John Roskelley, Presiding Officer, and Board Members Dennis Dellwo. Board Member Judy Wall was unavailable. Present for Petitioners was David Robinson. Present for Respondent was Steve Graham.

On June 19, 2006, the Board issued its Prehearing Order.

On September 19, 2006, the Board held the Hearing on the Merits. Present were, John Roskelley, Presiding Office, and Board Member Dennis Dellwo. Board Member Judy Wall was unavailable. Present for Petitioners was David Robinson. Present for Respondent was Steve Graham.

On October 2, 2006, the Board issued its Final Decision and Order.

On November 20, 2006, the Board issued its Order Setting Compliance Hearing and Briefing Schedule.

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

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

6 II. STANDARD OF REVIEW

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

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

14 The Board is charged with adjudicating GMA compliance, and,
15 when necessary, with invalidating noncompliant comprehensive
16 plans and development regulations. RCW 36.70A.280, .302. The
17 Board "shall find compliance unless it determines that the action
18 by the state agency, county or city is clearly erroneous in view of
19 the entire record before the county, or city is clearly erroneous
20 in view of the entire record before the Board and in light of the
21 goals and requirements of [the GMA]." RCW 36.70A.320(3). To
22 find an action "clearly erroneous" the Board must be "left with
23 the firm and definite conviction that a mistake has been
24 committed." *Dep't of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d
25 179, 201, 849 P.2d 646 (1993).

26 The Board will grant deference to counties and cities in how they plan under Growth
Management Act. RCW 36.70A.3201. But, as the Court has stated, "local discretion is
bounded, however, by the goals and requirements of the GMA." *King County v. Central
Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.2d 133
(2000). It has been further recognized that "[c]onsistent with *King County*, and
notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly

1 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and
2 goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn.App. 429, 444, 31
3 P.3d 28 (2001).

4 The Board has jurisdiction over the subject matter of the Petition for Review. RCW
5 36.70A.280(1)(a).

6 III. DISCUSSION

7 The Eastern Washington Growth Management Hearings Board (Board) requested a
8 compliance hearing for Case No. 06-1-0003. The parties briefed the remaining issues in this
9 case, which are: (1) Ferry County's failure to designate endangered, threatened and
10 sensitive species; (2) reliance on Ferry County's (County) pre-GMA Shorelines Master
11 Program (SMP) to regulate buffers on streams and lakes subject to the Shoreline
12 Management Act (SMA); (3) the County's failure to designate buffers for Type 1 and 2
13 waters based on BAS; and (4) the County's failure to designate wetland buffers based on
14 BAS.

15 The Petitioners claim the County is out of compliance for failure to pass legislation to
16 comply with the Board's Final Decision and Order on the remaining issues in this case. The
17 County contends it has legislation currently in process to amend the Comprehensive Plan,
18 Critical Areas Ordinance and the development regulations ordinance for the three issues.
19 Both parties agree the County is still in non-compliance in Case No. 06-1-0003.

20 VI. ORDER

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

26 Respondent's Statement of Actions Take to Comply is due to the parties and Board
by **December 22, 2008**. Petitioners' compliance brief is due to the parties and Board by

1 **January 5, 2009.** Respondent's compliance brief is due to the parties and Board by
2 **January 20, 2009.** Petitioners' optional reply brief is due to the parties and Board by
3 **January 26, 2009.**The Compliance Hearing is scheduled for **February 2, 2009, from**
4 **10:00 a.m. to 1:00 p.m. The compliance hearing shall be limited to consideration**
5 **of the Legal Issues found noncompliant and remanded in this Order. The parties**
6 **will call: 360-407-3780 followed by 488728 and the # sign. Ports are reserved**
7 **for Mr. Robinson and Mr. Graham. The parties shall file the original and four**
8 **copies. Board originals, Board Member copies and exhibits must be single sided,**
9 **two hole, top center punched, clearly tabbed, and accompanied by a table of**
10 **attached exhibits naming and describing each exhibit.**

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

12 EASTERN WASHINGTON GROWTH MANAGEMENT
13 HEARINGS BOARD

14 _____
15 John Roskelley, Board Member

16 _____
17 Dennis Dellwo, Board Member

18 _____
19 Joyce Mulliken, Board Member