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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. 97-1-0018

SIXTH ORDER ON COMPLIANCE

I. PROCEDURAL HISTORY

On May 23, 2000, the Board issued its Second Order on Compliance in the above-entitled matter. The Board directed Ferry County to (1) designate fish and wildlife habitat and species utilizing Best Available Science (BAS) within 120 days of the Order, and (2) develop policies for designation of frequently flooded areas and aquifer recharge areas utilizing BAS within 90 days of the Order.

On May 3, 2002, the Board received a letter from Stephen Graham, Ferry County Prosecuting Attorney requesting the Board hold a compliance hearing addressing designation of aquifer recharge areas and frequently flooded areas.

On June 14, 2002, the Board held a telephonic compliance hearing. Present were Presiding Officer, D. E. "Skip" Chilberg, and Board Members Dennis Dellwo and Judy Wall.

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

3 On June 21, 2002, an Order was entered finding that Ferry County had brought
4 themselves into compliance on frequently flooded areas issues. A mistake was made in the
5 drafting of the order. While the Board found that Ferry County complied with the Board
6 Order regarding frequently flooded areas, the order mistakenly declared Ferry County has
7 complied with all issues in Case No. 97-1-0018. This Amended Order is entered to correct
8 that error.

9 On January 24, 2003, the Board issued its Amended Fourth Order on Compliance.

10 On November 13, 2006, the Board received Respondent's Tentative Six-Month
11 Compliance Schedule.

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

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

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

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

21 II. STANDARD OF REVIEW

22 Comprehensive plans and development regulations (and amendments thereto)
23 adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon
24 adoption by the local government. RCW 36.70A.320. The burden is on the Petitioner to
25

1 demonstrate that any action taken by the respondent jurisdiction is not in compliance with
2 the Act. RCW 36.70A.320.

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

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

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

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

1 **III. DISCUSSION**

2 The Eastern Washington Growth Management Hearings Board (Board) requested a
3 sixth compliance hearing for Case No. 97-1-0018. The parties briefed the remaining issue in
4 this case, which is: (1) the County's failure to identify endangered, threatened and sensitive
5 species for which habitat will be protected.

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 remaining issue. The County
8 contends it has legislation currently in process to amend the Comprehensive Plan, Critical
9 Areas Ordinance and the development regulations ordinance to comply with this issue. Both
10 parties agree the County is still in non-compliance in Case No. 97-1-0018.

11 **IV. ORDER**

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

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

1 two hole, top center punched, clearly tabbed, and accompanied by a table of
2 attached exhibits naming and describing each exhibit.

3 SO ORDERED this 9th day of June 2008.

4 EASTERN WASHINGTON GROWTH
5 MANAGEMENT HEARINGS BOARD

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7 _____
8 John Roskelley, Board Member

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10 _____
11 Dennis Dellwo, Board Member

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14 Joyce Mulliken, Board Member

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