

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 LAKE CAVANAUGH IMPROVEMENT ASSOCIATION and
4 CITIZENS TO SAVE PILCHUCK CREEK,

Petitioners,

5
6 v.

7 SKAGIT COUNTY,

8
9 Respondent.

CASE NO. 04-02-0011

**ORDER FINDING
COMPLIANCE
AND CLOSING THE
CASE**

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11 This matter comes to the Board on Skagit County's Statement of Actions to Achieve
12 Compliance filed with the Board on November 24, 2005. The County states that the
13 adoption of Skagit County Ordinance No. 020050011 approving amendments to the "Parks
14 and Recreation" Section in Chapter 3, Capital Improvements, of the Skagit County Capital
15 Facilities Plan, achieves compliance with the Board's July 29, 2005, order. This order found
16 that the Parks Plan Element of the Skagit County Comprehensive Plan was consistent with
17 the County's comprehensive plan policies and development regulations, with one exception.
18 Compliance Order (July 29, 2005). This exception was an inconsistency between the
19 amended Parks Plan Element and the Capital Facilities Plan. The County seeks a finding of
20 compliance.
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24 Petitioners agree that Ordinance No. 020050011 addresses the remaining consistency
25 issue identified in the Board's last order in this case.
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27 **I. PROCEDURAL HISTORY**

28 Petitioners Lake Cavanaugh Improvement Association and Citizens to Save Pilchuck Creek
29 filed a Petition for Review on June 4, 2004, challenging the portion of the County's
30 comprehensive plan (the Skagit County's Park Plan) that allowed a shooting range with
31 associated buildings and parking lot to be constructed in designated forest lands. An
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1 amended petition, citing further references to the State's Growth Management Act (GMA),
2 was filed on July 1, 2004.

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4 On September 9, 2004, as a result of Petitioner's July 16, 2004, dispositive motion, the
5 Board issued its Order on Dispositive Motion on September 9, 2004. The Board found
6 Skagit County's Park Plan noncompliant with prior rulings of the Board and the courts. The
7 Board found that the Parks Plan allowed for unwarranted conversion of designated
8 industrial forest lands; introduced incompatible uses adjacent to industrial forest lands;
9 lacked internal consistency with the County's adopted Comprehensive Plan and policies,
10 land use designations map, and development regulations; and was noncompliant with RCW
11 36.70A.020(8), .030(8), and .070(preamble). Order on Dispositive Motion (September 9,
12 2004).
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16 On April 4, 2005, Skagit County adopted Ordinance No. 20050006, an amendment to the
17 County's Plan, for the purposes of complying with the Growth Management Act (GMA).
18 After briefing and a hearing, the Board found that the Parks Plan element amendment
19 adopted by Ordinance No. 20050006 cured the inconsistency between the Parks Plan
20 element and the comprehensive plan policies and development regulations because the
21 amendment removed the descriptor "indoor" from the description of the Frailey Mountain
22 shooting range. Compliance Order (July 29, 2005). This made the Parks Plan Element
23 consistent with comprehensive plan policies and development regulations, with one
24 exception. Because the capital facilities element described the shooting range as an
25 indoor/outdoor facility, there was an inconsistency between the amended Park Plan element
26 and the capital facilities element. *Id.*, RCW 36.70A.070. The Board further noted that it
27 would have to look to the project permit to find specific project characteristics of the
28 proposed shooting range that would conflict with a forestry use. Since the Board's
29 jurisdiction is limited by the statute to comprehensive plans and development regulations
30 and amendments to either, the Board could not determine whether the project permit
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1 application complies with the adopted plan policies and development regulations. Such a
2 determination is a matter for another tribunal.

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4 In response to the Board's July 29, 2005, decision, the County submitted its statement of
5 actions taken on November 4, 2005. Petitioners submitted a response on December 1,
6 2005. The Board held a compliance hearing at the Skagit County Commissioners' Office in
7 Mount Vernon on January 5, 2006. Mr. Don Anderson represented Skagit County.
8 Mr. Jeffrey Eustis represented Petitioners telephonically. All three Board members
9 attended.
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11 12 **II. DISCUSSION**

13 The County states that the County's approval of Ordinance No. 0200500011 approving
14 amendments to the "Parks and Recreation" Section in Chapter 3, Capital Improvements, of
15 the Skagit County Capital Facilities Plan, achieves compliance with the Board's July 29,
16 2005, order.
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19 Petitioners continue to believe that the County's efforts at paper compliance are
20 disingenuous in light of the County's contemporaneous pursuit of a shooting range proposal
21 at the Frailey Mountain site would involve a number of enclosed structures and a large
22 conversion of lands from forestry use. Nevertheless, Petitioners acknowledge that the
23 Board has determined that it lacks jurisdiction to address Growth Management Act
24 compliance with specific projects or proposals and that those determinations are
25 appropriately made by another tribunal such as the superior court. Petitioners' Response to
26 Skagit County's Actions Taken to Achieve Compliance (December 1, 2005) at 2. Petitioners
27 agree that, in the absence of a change in the Board's prior rulings, the removal of the
28 descriptor "indoor" from the capital facilities plan achieves compliance in this case.
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30 Petitioners' Response to Skagit County's Actions Taken to Achieve Compliance
31 (December 1, 2005) at 2.
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1 **Conclusion:** The County has removed the descriptor “indoor” from its Capital Facilities
2 Plan. Ordinance 0200500011 at 6 and 11. The Board finds that the adoption of Ordinance
3 020050011 that removes the descriptor “indoor” from Skagit County’s Capital Facilities Plan
4 makes the Capital Facilities Plan consistent with the Parks Plan Element. This action
5 makes the Skagit County Comprehensive Plan consistent with RCW 36.70A.070.
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7 8 **III. ORDER**

9 Based on the foregoing, the Board finds that the challenged provisions of the County’s
10 comprehensive plan, particularly the Capital Facilities Plan and the Parks Plan Element,
11 COMPLY with RCW 36.70A.070 and the Board’s July 29, 2005, order. WWGMHB Case
12 No. 04-2-0011 is hereby CLOSED.
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15 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

16 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the date of
17 mailing of this Order to file a motion for reconsideration. The original and three copies
18 of a motion for reconsideration, together with any argument in support thereof, should
19 be filed with the Board by mailing, faxing or otherwise delivering the original and three
20 copies of the motion for reconsideration directly to the Board, with a copy served on all
21 other parties of record. **Filing means actual receipt of the document at the Board office.**
22 RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for
reconsideration is not a prerequisite for filing a petition for judicial review.

23 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
24 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial
25 review may be instituted by filing a petition in superior court according to the
26 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
27 Enforcement. The petition for judicial review of this Order shall be filed with the
28 appropriate court and served on the Board, the Office of the Attorney General, and all
29 parties within thirty days after service of the final order, as provided in RCW 34.05.542.
30 Service on the Board may be accomplished in person or by mail, but service on the
Board means **actual receipt of the document at the Board office within thirty days after**
31 service of the final order. A petition for judicial review may not be served on the Board
32 by fax or by electronic mail.

1 **Service.** This Order was served on you the day it was deposited in the United States
2 mail. RCW 34.05.010(19)

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4 Entered this 23rd day of January 2006.

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7 Holly Gadbow, Board Member

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11 Margery Hite, Board Member

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15 Gayle Rothrock, Board Member