

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 Advocates for Responsible Development and
3 John Diehl,

Case No. 06-2-0005

4
5 Petitioners,

COMPLIANCE ORDER

6 v.

7
8 Mason County,

9 Respondent.

10
11
12 **I. SYNOPSIS OF THE DECISION**

13 This compliance order addresses the County's compliance efforts towards the storm water
14 management plans for the Belfair and Allyn urban growth areas (UGAs). After significant
15 work on a centralized storm water management system, the County responded to the
16 comment of public agencies and citizens by revising the Mason County strategy for storm
17 water management. Instead of attempting to detain, treat and convey storm water as part of
18 a centralized management program, the new County plan "emphasizes the use of low
19 impact development, infiltration, dispersion, and natural vegetation retention." The use of
20 low impact development (LID) offers the County an opportunity to reduce existing and future
21 impervious surfaces, optimize the retention of natural vegetation, infiltrate on site as existing
22 soils allow, and disperse, runoff in a sheet flow manner into remaining naturally vegetated
23 areas.
24
25

26 In this compliance order, the Board finds that the County has adopted compliant changes to
27 its storm water management plans in its capital facilities element and that these now comply
28 with RCW 36.70A.070(3)(b) and (c). The remaining area of non-compliance is the six-year
29 plan that will finance needed capital facilities within projected funding sources. The County
30 has identified a potential source of revenues in a storm water utility but has yet to establish
31 such a utility. There is also an inadvertent error in double-counting SEPA mitigation fees in
32

1 reaching the needed financing for projected costs. Therefore, the storm water management
2 plans in the comprehensive plan capital facilities element are still in non-compliance with
3 RCW 36.70A.070(3)(d); although we have every confidence that the County will be able to
4 bring its six-year financing plan into compliance if it follows its current, excellent strategy.

5
6 The storm water management plan relies upon adoption of an LID ordinance and adoption
7 of the 2005 Department of Ecology (Ecology) storm water management manual. These are
8 central elements described in the plans themselves. The County is working to develop and
9 adopt these additional regulations, but until they do, necessary development regulations
10 implementing the storm water management plans have not been adopted, as required by
11 RCW 36.70A.040(3)(d); and the County comprehensive plan and development regulations
12 do not yet meet the requirements for urban levels of storm water management service for
13 urban densities in RCW 36.70A.110(3), and goals 2 and 12 (RCW 36.70A.020(2) and (12))
14 of the Growth Management Act (GMA).
15
16

17 **II. PROCEDURAL HISTORY**

18 The petition for review in this case was filed on February 13, 2006. Petitioners are
19 Advocates for Responsible Development and John E. Diehl (collectively "ARD"). Petitioners
20 challenged Mason County's update of its comprehensive plan and development regulations.
21

22
23 On August 14, 2006, the Board issued its Final Decision and Order. In that order, the Board
24 found that Mason County failed to comply on the following issues: (1) its comprehensive
25 plan and development regulations failed to ensure that public services will be available
26 when urban levels of development are allowed in the Belfair UGA and did not comply with
27 RCW 36.70A.110(3) and RCW 36.70A.020(12); (2) the portion of the capital facilities
28 element that describes the Belfair Area Sewer Improvement Project does not yet show how
29 the County will finance public sewer capital facilities in the Belfair UGA within projected
30 funding capacities, nor does it clearly identify sources of public money and did not comply
31 with RCW 36.70A.070(3)(d); (3) the capital facilities element and funding plan for storm
32

1 water management in the Belfair and Allyn UGAs did not contain a forecast of the future
2 needs for stormwater management facilities; and (4) the proposed locations and capacities
3 of expanded or new capital facilities and at least a six-year plan that will finance such capital
4 facilities within projected funding capacities and clearly identifies sources of public money
5 for such purposes and did not comply with RCW 36.70A.070(3) and RCW 36.70A.020(12).
6 The order established a compliance date of February 7, 2007.
7

8
9 The Board granted a compliance period extension until August 6, 2007.¹ On July 6, 2007,
10 the Board granted the County's request to bifurcate the sewer and stormwater compliance
11 issues to give the County more time for public participation in the adoption of the stormwater
12 plan.²
13

14 On November 14, 2007, the Board issued an order on the sewer compliance issues.³ This
15 order found that the sewer plan lacked a financing plan for the North and East Belfair Urban
16 Growth Area and that the County's development regulations still allowed for urban
17 development without adequate urban services. The Board found the sewer plan
18 noncompliant and the development regulations noncompliant and invalid.
19

20 On September 18, 2007, the County adopted Ordinance 108-07 that amended its capital
21 facilities element and adopted stormwater management plans for the Allyn and Belfair
22 UGAs.
23

24
25 The County filed its Compliance Report on October 15, 2007. After Petitioners and the
26 County filed their prehearing briefs, a compliance hearing was held on December 17, 2007.
27 John Diehl represented ARD and himself, Deputy Prosecutor T.J. Martin represented
28 Mason County. All three Board Members attended. Board Member Margery Hite presided.
29

30
31 ¹ Order Granting Extension of the Compliance Period, Denying Request for Invalidity, and Setting of
32 Compliance Schedules.

² Order on County's Request to Bifurcate Issues and Continue Stormwater Compliance (July 7, 2007).

³ Compliance Order on Plan and Development Regulations –Sewer in the Belfair UGA.

1 Motion to Strike

2 Mason County objects to the use and reference by Petitioners to any documents listed in
3 Stormwater Management Objections to a Finding of Compliance and Request for Invalidation
4 which were not submitted with their brief.⁴ At the hearing on the merits, the County agreed
5 that the Board could properly consider those exhibits cited by Petitioners which had already
6 been submitted by the County. In particular, Exhibits 509 and 510 (the Belfair Stormwater
7 Management Plan Addendum Dated August 21, 2007; and the Allyn Stormwater
8 Management Plan Addendum Dated August 21, 2007; respectively) were submitted in their
9 entirety via a CD and the County has no objection to the Board considering those exhibits.
10 However, Petitioners cite to Index No. 494, 482 and 507 in their objections to a finding of
11 compliance without including those documents as exhibits. The Board denies the use of
12 those documents, therefore, and strikes that portion of Petitioners' brief that relies upon
13 them.⁵
14
15

16
17 **III. BURDEN OF PROOF**

18 For purposes of board review of the comprehensive plans and development regulations
19 adopted by local government, the GMA establishes three major precepts: a presumption of
20 validity; a "clearly erroneous" standard of review; and a requirement of deference to the
21 decisions of local government.
22

23 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
24 amendments to them are presumed valid upon adoption:

25 Except as provided in subsection (5) of this section, comprehensive plans and
26 development regulations, and amendments thereto, adopted under this chapter
27 are presumed valid upon adoption.
28
29

30
31 ⁴ Mason County's Response to Petitioner's objection to a Finding of Compliance and Request for Invalidation Re:
32 Allyn and Belfair Stormwater Plans at 1.

⁵ These exhibits and the argument based upon them are found in the first sentence of Petitioners' Stormwater
Management Objections to a Finding of Compliance and Request for Determination of Invalidation.

1 The statute further provides that the standard of review shall be whether the challenged
2 enactments are clearly erroneous:

3 The board shall find compliance unless it determines that the action by the state
4 agency, county, or city is clearly erroneous in view of the entire record before the
5 board and in light of the goals and requirements of this chapter.

6 RCW 36.70A.320(3)

7 In order to find the County's action clearly erroneous, the Board must be "left with the firm
8 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
9 121 Wn.2d 179, 201, 849 P.2d 646 (1993).
10

11 Within the framework of state goals and requirements, the boards must grant deference to
12 local government in how they plan for growth:
13

14 In recognition of the broad range of discretion that may be exercised by counties and
15 cities in how they plan for growth, consistent with the requirements and goals of this
16 chapter, the legislature intends for the boards to grant deference to the counties and
17 cities in how they plan for growth, consistent with the requirements and goals of this
18 chapter. Local comprehensive plans and development regulations require counties
19 and cities to balance priorities and options for action in full consideration of local
20 circumstances. The legislature finds that while this chapter requires local planning to
21 take place within a framework of state goals and requirements, the ultimate burden
22 and responsibility for planning, harmonizing the planning goals of this chapter, and
23 implementing a county's or city's future rests with that community.

24 RCW 36.70A.3201 (in part).

25 In sum, the burden is on Petitioners to overcome the presumption of validity and
26 demonstrate that any action taken by the County is clearly erroneous in light of the goals
27 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
28 Where not clearly erroneous and thus within the framework of state goals and requirements,
29 the planning choices of local government must be granted deference.

30 **IV. ISSUES PRESENTED**

31 Issue 1: Does the capital facilities element and funding plan for storm water management
32 in the Belfair and Allyn UGAs fail to comply with RCW 36.70A.070(3) because it does not

1 contain a forecast of the future needs for stormwater management facilities; the proposed
2 locations and capacities of expanded or new storm water management capital facilities; and
3 at least a six-year plan that will finance such capital facilities within projected funding
4 capacities and clearly identifies sources of public money for such purposes?⁶
5

6 Issue 2: Do Mason County's comprehensive plan and development regulations fail to
7 ensure that storm water management services will be available when urban levels of
8 development are allowed in the Belfair UGA and violate RCW 36.70A.110(3), the
9 concurrency goal (12) of the GMA (RCW 36.70A.020(12)), and the anti-sprawl goal (2) of
10 the GMA (RCW 36.70A.020(2))?⁷
11

12 **V. DISCUSSION OF THE ISSUES**

13 **Positions of the Parties**

14 Petitioners' position

15 The Plan and Concurrency (Issues 1 and 2)

16
17 Petitioners argue that Mason County's action fails to implement its stormwater plan because
18 it fails to adopt any implementing development regulations, including the Low Impact
19 Development standards that the plan recommends. Petitioners also contend that the plan
20 recommends a variety of sources to fund the stormwater plan which the County has yet to
21 adopt.⁸ Petitioners claim that the stormwater plan's lack of implementation measures
22 mean that adequate storm drainage facilities will not be available at the time of a
23 development's occupancy contrary to RCW 36.70A.020(12). Because the County has failed
24 to stage development with the availability of stormwater protection facilities, the County is
25 allowing for sprawling, leap frog development in violation of RCW 36.70A.020(2).⁹
26
27
28
29

30 ⁶ Final Decision and Order (August 14, 2006). Conclusion of Law L.

31 ⁷ Final Decision and Order (August 14, 2006), Conclusion of Law J.

32 ⁸ Stormwater Management Objections to a Finding of Compliance and Request for a Determination of
Invalidity at 1 and 2.

⁹ Ibid at 8.

1 Invalidity

2 Petitioners advocate for an imposition of invalidity because allowing new development in the
3 the urban growth areas without adequate stormwater protection measures creates new
4 impervious surfaces that will be extremely expensive to retrofit. Allowing this development
5 will interfere with the County's ability to plan in accordance with the Growth Management
6 Act (GMA) and interferes with GMA goals 2, 9, 10, and 12. Further, Petitioners contend that
7 the County's neglect in providing adequate stormwater protection facilities further
8 exacerbates Hood Canal's water quality problems.¹⁰

10
11 County's Position

12 The Storm Water Management Plans (Issue 1)

13 The County asserts that the adoption of the Allyn and Belfair Stormwater Management
14 Plans bring the County into full compliance with the Board's August 14, 2006, Compliance
15 Order.¹¹ The County states that these documents have been incorporated by reference
16 into the County's comprehensive plan. The County says that the plan includes
17 recommendations for development of design criteria, Low Impact Design (LID) standards,
18 retrofit of existing development to include LID standards, and baseline water quality
19 monitoring.¹²

21
22 As for implementation of the recommendations in the plans, the County explains that a draft
23 developed by state agencies for LID standards has been given to the County to finalize and
24 adopt. The County foresees that it will adopt these standards in 2008 along with a
25 stormwater ordinance that will include design standards consistent with the 2005
26 Department of Ecology Manual. The County further asserts that it expects to establish
27 legal authorities for maintenance, enforcement, and inspection.¹³ As for financing the plan,

29
30 ¹⁰ *Ibid* at 3 and 4.

31 ¹¹ Mason County's Response to Petitioner's objection to a Finding of compliance and Request for Invalidity
RE: Allyn and Belfair Stormwater Management Plans at 2

32 ¹² *Ibid* at 3.

¹³ *Ibid* at 5.

1 the County points out that the plans present a variety of sources for funding the stormwater
2 plans, including a stormwater utility. The County describes the process for establishing the
3 utility that includes a Stormwater Task Force and County Commissioners' briefings.¹⁴
4

5 Concurrency (Issue 2)

6 The County disagrees with Petitioners' allegation that the Belfair and Allyn Stormwater
7 Management Plans fail to achieve concurrency. The Belfair Zoning Code allows for urban
8 uses in the Belfair UGA and measures are in place to assure that development is truly
9 urban, the County maintains. Further, the County declares that the development review
10 process ensures that plans are managed to assure compliance with stormwater plans and
11 established county codes.¹⁵
12

13 Invalidity

14 The County argues that invalidity is not necessary at this time for the following reasons.
15 The County stresses that it has responded to various state agency comments and has
16 included recommendations to adopt the Ecology 2005 manual, LID standards, and
17 expanded water quality monitoring program, as well as diverting county money to retrofitting
18 of existing development with current standards. Also, the County emphasizes that it has
19 adopted additional small parcel storm drainage requirements in 2006 that went into effect in
20 January 2007 that adds storm water protection for urban-sized lots. These protections
21 apply to parcels of one-acre or less or with a combined imperious service of 2,000 square
22 feet.¹⁶
23
24
25

26 Board Discussion

27 The issue before the Board in this hearing is the compliance of Ordinance 108-07 with the
28 August 14, 2006 Final Decision and Order non-compliance findings with respect to the
29

30
31 ¹⁴ *Ibid* at 5 and 6.

32 ¹⁵ *Ibid* at 7

¹⁶ *Ibid* at 9 and 10.

1 storm water management plan for the Allyn and Belfair UGAs.¹⁷ The County adopted
2 Ordinance 108-07 on September 18, 2007, which amends the capital facilities element of
3 the comprehensive plan to “include and adopt stormwater management plans for the Allyn
4 and Belfair Urban Growth Areas.”¹⁸ The adoption of Ordinance 108-07 addresses the storm
5 water management plans for Belfair and Allyn, but does not adopt any implementing
6 development regulations.
7

8
9 A. The Storm Water Management Plan (Issue 1)

10 Conclusion of Law L:

11 The capital facilities element and funding plan for storm water management in the
12 Belfair and Allyn UGAs fails to comply with RCW 36.70A.070(3) because it does not
13 contain a forecast of the future needs for stormwater management facilities; the
14 proposed locations and capacities of expanded or new capital facilities; and at least
15 a six-year plan that will finance such capital facilities within projected funding
16 capacities and clearly identifies sources of public money for such purposes. These
17 deficiencies are clearly erroneous and also fail to meet Goal 12 of the GMA.¹⁹

18 Although the County initially looked at a centralized system of detention, treatment and
19 conveyance for storm water management, the comments of other public agencies and
20 citizens led the County to settle on a plan that “emphasizes the use of low impact
21 development, infiltration, dispersion, and natural vegetation retention.”²⁰ Low impact
22 development or LID, in the County’s plan, will be used to treat existing storm water runoff,
23 as well as to address the storm water capital needs associated with future development.²¹

24 The LID approach is described this way:

25 Using a LID type of an approach emphasizes the objective to reduce existing and
26 future impervious surfaces, optimize the retention of natural vegetation, infiltrate on
27

28
29 ¹⁷ Mason County’s Compliance Report and Index to Record re: Allyn and Belfair Storm Water Management
30 Plans, October 15, 2007.

31 ¹⁸ *Ibid* at 1.

32 ¹⁹ Final Decision and Order at 48

²⁰ Section 4.2 of Allyn Stormwater Management Plan Addendum, Dated August 21, 2007 (Allyn Addendum)
(Response to Public Comments)

²¹ Allyn Addendum at Section 4.7.

1 site as existing soils allow, and disperse runoff in a sheetflow manner into remaining
2 naturally vegetated areas. This approach is in contrast to the traditional engineering
3 approach that would typically route all runoff from the site into a network of regional
4 collection and conveyance facilities that would lead to a series of large, onsite or
5 regional detention and treatment facilities, where the runoff would be treated prior to
6 its discharge to local receiving waters.²²

7 The future facilities needed are forecasted for each UGA – Allyn and Belfair – as part of the
8 retrofit of existing facilities and facilities needed for future development.²³ Thus the new
9 storm water management plan “contain[s] a forecast of the future needs for stormwater
10 management facilities; [and] the proposed locations and capacities of expanded or new
11 capital facilities” as required by RCW 36.70A.070(3)(b) and (c).
12

13 The more difficult question comes with respect to the requirement for “at least a six-year
14 plan that will finance such capital facilities within projected funding capacities and clearly
15 identifies sources of public money for such purposes” (RCW 36.70A.070(3)(d)). Both the
16 Belfair and the Allyn storm water management plans set out the estimated capital costs for a
17 six-year period but the plan for financing such costs is less clear. As the plans themselves
18 state: “It is likely that the biggest challenge facing the County in the development and
19 implementation of the Belfair Storm Water Management Plan will be the development of the
20 needed revenues within the required time frame.”²⁴ The August 2007 Addenda reiterated
21 this point, indicating that “it is likely that various new revenue sources will need to be
22 created and/or existing revenue sources will need to be reprioritized so that additional
23 revenue can be directed to the new Comprehensive Countywide SWM Program”.²⁵
24
25

26 The plan lays out some possible sources of revenue for the six-year costs but has not
27 established the storm water utility which is anticipated to be the source of about a fourth of
28
29

30 _____
31 ²² Allyn Addendum at Section 4.7.
32 ²³ Allyn Addendum, Section 4; Belfair Addendum at 31.
²⁴ Belfair UGA Storm Water Management Plan at 67.
²⁵ Belfair Addendum at 11; Allyn Addendum at 10-11.
ORDER ON COMPLIANCE – STORMWATER MANAGEMENT
Case No. 06-2-0005
January 25, 2008
Page 10 of 18

1 the costs.²⁶ Under these circumstances, the Board cannot find that the storm water plans
2 contain “at least a six-year plan that will finance such capital facilities within projected
3 funding capacities and clearly identifies sources of public money for such purposes.”
4

5 **Conclusion:** Because there is no six-year plan that will actually finance the six-year capital
6 facilities needs, the storm water plans are not compliant with RCW 36.70A.070(3)(d). On
7 the other hand, the storm water plans do contain a forecast of future needs and proposed
8 locations for expanded and new capital facilities as required by RCW 36.70A.070(3)(b) and
9 (c). They are, therefore, compliant with RCW 36.70A.070(3)(b) and (c).
10

11
12 B. Concurrency (Issue 2)

13 At the hearing on the merits, there was some confusion about what is before the Board at
14 this time because the Board’s non-compliance determination with respect to concurrency
15 relates to all public services, including storm water management:
16

17 Conclusion of Law J:

18 The failure of Mason County’s comprehensive plan and development regulations to
19 ensure that public services will be available when urban levels of development are
20 allowed in the Belfair UGA is clearly erroneous and violates RCW 36.70A.110(3),
21 the concurrency goal (12) of the GMA (RCW 36.70A.020(12)), and the anti-sprawl
22 goal (2) of the GMA. RCW 36.70A.020(2)²⁷

23 However, the concurrency issue depends in large measure upon the implementing
24 development regulations. The new direction the County has taken with respect to LIDs
25 instead of centralized treatment facilities requires the adoption of “ the Ecology 2005
26 Manual and the development and adoption of a LID ordinance continue to be promoted and
27
28
29
30

31 ²⁶ The County also appears to count one source of funding twice – SEPA mitigation fees and project-specific
32 funding being the same thing, according to the County’s response to Board questions.

²⁷ *Ibid* at 47.

1 are recommended.”²⁸ These implementing development regulations are integral to the
2 new LID strategy and the County has not yet adopted them.²⁹
3

4 The County agrees that it has not yet adopted its development regulations implementing the
5 new storm water management plans, but points out that it is making significant progress:

6 It is the County’s intent to complete all documents by early 2008. The County has
7 included specific recommendations to immediately update the County’s design
8 standards to be consistent with the 2005 Ecology manual and adopt a new LID [Low
9 Impact Development] ordinance that makes it a requirement to use LID when ever
10 local soils and site conditions allow. In addition, other legal authorities are expected
11 to be written regarding maintenance, inspection, and enforcement in the future, as
12 the County continues to prepare for the receipt of the NPDES Phase II Permit within
13 the next five years.³⁰

14 This means that the County has not yet achieved compliance with Conclusion of Law J,
15 ensuring that storm water management services will be available when urban levels of
16 development are allowed in the Belfair UGA. As the Board found in the Final Decision and
17 Order, the failure to meet this requirement violates RCW 36.70A.110(3) and Goals 2 and 12
18 of the GMA. (RCW 36.70A.020(2) and (12))

19
20 Further, because the new storm water management plans rely upon a future LID ordinance
21 and the adoption of the 2005 Ecology storm water management manual, these are
22 necessary development regulations for Mason County. Therefore, the planned adoption of
23 the LID ordinance and the 2005 manual are necessary for compliance pursuant to RCW
24 36.70A.040(3)(d) and 36.70A.130(1)(d).
25

26
27 **Conclusion:** The issue of the compliance of both the plan and the development regulations
28 as to concurrency of storm water management services with urban levels of development
29

30
31 ²⁸ Allyn Addendum at 32.

32 ²⁹ Mason County’s Response to Petitioner’s objection to a Finding of compliance and Request for Invalidity
RE: Allyn and Belfair Stormwater Management Plans at 5.

³⁰ Mason County’s Response Re: Allyn and Belfair Stormwater Management Plans at 5.

1 has not yet been fully addressed by the County. Since there is no question but that the
2 County has not yet adopted its development regulations on storm water management (in
3 particular the 2005 Ecology Manual and the new LID ordinance), the Board cannot yet find
4 compliance on this score. Therefore, the Board will find continuing non-compliance as to
5 concurrency and storm water management, with the understanding that the County is
6 moving expeditiously to adopt its applicable development regulations and will bring them to
7 the Board when they are ready.³¹

10 VI. INVALIDITY

11 Petitioners request a finding that the County's failure "to implement the storm water
12 management plan to provide essential government services for the UGAs interferes
13 substantially with fulfilling GMA goals 2 and 12."³² Petitioners argue that new impervious
14 surfaces will be created without corresponding mitigation if development is allowed to occur
15 in the Belfair and Allyn UGAs during the compliance period.³³

17 The County responds that this contention fails to recognize the new approach taken by the
18 County to require on-site low impact development techniques for all new development and
19 redevelopment.³⁴ The County points out that its draft LID ordinance will be sent out for
20 public review and comment in the first part of 2008.³⁵ The County also points to its intention
21 to adopt the 2005 Ecology Storm Water Management Manual and that it has adopted its
22 Small Parcel Drainage requirements.³⁶

25 A finding of invalidity may be entered when a board makes a finding of noncompliance and
26 further includes a "determination, supported by findings of fact and conclusions of law that
27

29 ³¹ *Ibid.*

30 ³² Objections to Finding of Compliance and Request for Invalidity at 4.

31 ³³ *Ibid.*

32 ³⁴ Mason County's Response Re: Allyn and Belfair Stormwater Management Plans at 8.

³⁵ *Ibid* at 8-9.

³⁶ *Ibid* at 9-10.

1 the continued validity of part or parts of the plan or regulation would substantially interfere
2 with the fulfillment of the goals of this chapter.” RCW 36.70A.302(1) (in pertinent part).

3
4 We have held that invalidity should be imposed if continued validity of the noncompliant
5 comprehensive plan provisions or development regulations would substantially interfere with
6 the local jurisdiction’s ability to engage in GMA-compliant planning. See *Butler v. Lewis*
7 *County*, WWGMHB Case No. 99-2-0027c (Order Finding Noncompliance and Imposing
8 Invalidity, February 13, 2004). Under this analysis, a finding of invalidity has been imposed
9 where there is a serious risk of significant inconsistent development vesting before the date
10 on which the local jurisdiction is expected to achieve compliance.

11
12
13 Here, we do not find such a serious risk of inconsistent development. The County is
14 working expeditiously to adopt an LID ordinance and the 2005 Ecology Storm Water
15 Manual. The change in direction from a centralized storm water treatment facility to an LID
16 approach was adopted in September of 2007. The County needs some time to hold its
17 public process on the LID ordinance it has already drafted and to incorporate the 2005
18 Ecology Storm Water Manual into its development regulations. While non-compliant in
19 respect of the financing plan, the storm water management plans adopted in Ordinance
20 108-07 represent a responsible and innovative approach to managing storm water, a
21 difficult problem for Mason County. Further, the County has adopted small parcel drainage
22 standards for urban-sized lots to manage storm drainage³⁷. The Board finds that a serious
23 risk of significant inconsistent development vesting before the next compliance hearing has
24 not been shown and therefore declines to impose invalidity at this time.
25
26

27 **VII. FINDINGS OF FACT**

- 28
29 1. Mason County is a county located west of the crest of the Cascade Mountains and is
30 required to plan pursuant to RCW 36.70A.040(1).
31

32

³⁷ MCC 14.48.130

- 1 2. Petitioners were original parties to this case and participated in the adoption of the
2 County's 2005 update of its comprehensive plan and development regulations.
3 3. The Board's Final Decision and Order of August 14, 2006 found the County's storm
4 water management plan for the Belfair and Allyn urban growth areas (UGAs) failed
5 to comply with RCW 36.70A.070(3). Conclusion of Law L.
6
7 4. On September 18, 2007, the County adopted Ordinance 108-07 that amended its
8 capital facilities element and adopted storm water management plans for the Allyn
9 and Belfair UGAs.
10 5. The adoption of Ordinance 108-07 addresses the storm water management plans for
11 Belfair and Allyn, but does not adopt any implementing development regulations.
12 6. Conclusion of Law L in the August 14, 2006 Final Decision and Order in this case
13 found:
14
15 The capital facilities element and funding plan for storm water management in
16 the Belfair and Allyn UGAs fails to comply with RCW 36.70A.070(3) because it
17 does not contain a forecast of the future needs for stormwater management
18 facilities; the proposed locations and capacities of expanded or new capital
19 facilities; and at least a six-year plan that will finance such capital facilities within
20 projected funding capacities and clearly identifies sources of public money for
21 such purposes. These deficiencies are clearly erroneous and also fail to meet
22 Goal 12 of the GMA.
23
24 7. The future storm water management facilities needed are forecasted for each UGA –
25 Allyn and Belfair – as part of the retrofit of existing facilities and facilities needed for
26 future development.
27 8. Both the Belfair and the Allyn storm water management plans set out the estimated
28 capital costs for a six-year period but the plan for financing such costs does not
29 show that the costs will actually be financed. The storm water management plan
30 lays out some possible sources of revenue for the six-year costs but has not
31 established the storm water utility which is anticipated to be the source of about a
32 fourth of the costs.

1 9. The County also appears to count one source of funding twice – “SEPA mitigation
2 fees” and “project-specific funding” in the County’s revenue projections being the
3 same thing, according to the County’s response to Board questions.

4 10. Conclusion of Law J of the August 14, 2006 Final Decision and Order states:

5 The failure of Mason County’s comprehensive plan and development
6 regulations to ensure that public services will be available when urban levels
7 of development are allowed in the Belfair UGA is clearly erroneous and
8 violates RCW 36.70A.110(3), the concurrency goal (12) of the GMA (RCW
9 36.70A.020(12)), and the anti-sprawl goal (2) of the GMA. RCW
10 36.70A.020(2).

11 11. The new direction that the County has taken with respect to LIDs instead of
12 centralized treatment facilities requires the adoption of “ the Ecology 2005 Manual
13 and the development and adoption of a LID ordinance continue to be promoted and
14 are recommended,” according to the Allyn Addendum of August 2007.

15 12. These implementing development regulations are integral to the new LID strategy
16 and the County has not yet adopted them.

17 13. The County has included specific recommendations to immediately update the
18 County’s design standards to be consistent with the 2005 Ecology manual and adopt
19 a new LID [Low Impact Development] ordinance that makes it a requirement to use
20 LID when ever local soils and site conditions allow. The County is working on these
21 recommendations but has not yet adopted the LID ordinance and the 2005 Ecology
22 Manual.
23

24 14. The County has adopted small parcel drainage standards. (MCC 14.48.130)

25 15. A serious risk of significant inconsistent development vesting before the next
26 compliance hearing has not been shown.
27

28 16. Any Finding of Fact hereafter determined to be a Conclusion of Law is adopted as
29 such.
30
31
32

1 **VIII. CONCLUSIONS OF LAW**

- 2 A. The Board has jurisdiction over the parties and subject-matter of this compliance
3 proceeding on storm water management.
- 4 B. Ordinance 108-07 complies with RCW 36.70A.070(3)(b) and (c) with respect to storm
5 water management facilities.
- 6 C. Ordinance 108-07 does not yet comply with RCW 36.70A.070(3)(d) with respect to
7 financing of storm water management facilities.
- 8 D. The County has not yet adopted development regulations to implement the storm
9 water management plan adopted in Ordinance 108-07 and this fails to comply with
10 RCW 36.70A.040(3)(d).
- 11 E. The County’s development regulations do not yet assure that urban levels of storm
12 water management services are available when urban densities are allowed as
13 required by RCW 36.70A.110(3), and Goals 2 and 12 of the GMA (RCW
14 36.70A.020(2) and (12)).
- 15 F. No determination of invalidity is warranted at this time.
- 16 G. Any Conclusion of Law hereafter determined to be a Finding of Fact is adopted as
17 such.
- 18
- 19
- 20

21 **IX. ORDER**

22 The County is directed to bring its storm water management plan and development
23 regulations into compliance with the GMA in accordance with this decision within 180 days
24 of the date of this order. The Board will entertain an earlier motion for a compliance
25 determination if the County takes action before the compliance date set below:
26

27

Item	Date Due
Compliance Due	July 11, 2008
Compliance Report and Index to Compliance Record	July 18, 2008
Objections to a Finding of Compliance	August 8, 2008
Response to Objections	August 29, 2008
Compliance Hearing	September 11, 2008

28

29

30

31

32

1 SO ORDERED this 25th day of January 2008.

2
3
4 _____
Margery Hite

5
6
7 _____
Holly Gadbow

8
9
10 _____
James McNamara

11
12 Pursuant to RCW 36.70A.300 this is a final order of the Board.

13
14 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the
15 mailing of this Order to file a petition for reconsideration. Petitions for
16 reconsideration shall follow the format set out in WAC 242-02-832. The original and
17 three copies of the petition for reconsideration, together with any argument in
18 support thereof, should be filed by mailing, faxing or delivering the document directly
19 to the Board, with a copy to all other parties of record and their representatives.
20 Filing means actual receipt of the document at the Board office. RCW 34.05.010(6),
21 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for
22 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
25 judicial 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
30 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,
31 but service on the Board means actual receipt of the document at the Board office
32 within thirty days after service of the final order.

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