BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

DRY CREEK COALITION and FUTUREWISE, Petitioners, v. CLALLAM COUNTY, Respondent.	Case No. 07-2-0018c **ORDER ON DRY CREEK COALITION'S MOTION FOR RECONSIDERATION OF THE COMPLIANCE ORDER AND MOTION FOR CHANGE IN SCHEDULE**

THIS Matter comes before the Board upon Petitioner Dry Creek Coalition's ("DCC") Motion for Reconsideration of the Board's January 30, 2009 Compliance Order (CO).[1] This motion includes a request to reschedule the date of the compliance hearing currently set for September 10, 2009. Clallam County opposes the Motion for Reconsideration.[2] DCC filed a Motion to Strike the County's response to its Motion for Reconsideration.[3] DCC also filed a Motion for Change in Schedule[4] for the Compliance Hearing currently set for September 11, 2009.

DISCUSSION

A motion for reconsideration of a final decision of a Board is governed by WAC 242-02-832. It provides, at WAC 242-02-832(2), that a motion for reconsideration must be based on at least one of the following grounds:

(a) Errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration;
(b) Irregularity in the hearing before the board by which such party was prevented from having a fair hearing; or

[1] DCC Motion for Reconsideration, filed February 9, 2009 (Motion for Reconsideration).
[2] Clallam County's Response to Petitioner DCC Motion for Reconsideration, filed February 19, 2009.
[3] DCC Motion to Strike County Response to Motion for Reconsideration, filed February 19, 2009.
[4] DCC Motion for Change in Schedule, filed February 13, 2009.

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(c) Clerical mistakes in the final decision and order.

In addition to reconsideration, DCC also seeks to amend the compliance schedule set forth in the Compliance Order (CO).

As a preliminary matter, the Board notes that DCC has moved to strike the County's response as it was untimely.[5] With regard to the filing of a response to motions for reconsideration, WAC 242-02-832(1) provides:

> (1) After issuance of a final decision any party may file a motion for reconsideration with a board in accordance with subsection (2) of this section. Such motion must be filed within ten days of service of the final decision. The original and three copies of the motion for reconsideration shall be filed with the board. At the same time, copies shall be served on all parties of record. Within five days of filing the motion for reconsideration, a party may file an answer to the motion for reconsideration without direction or request from the board. A board may require other parties to supply an answer. All answers to motions for reconsideration shall be served on all parties of record.

Petitioner filed its Motion for Reconsideration within ten days of the Board's issuance of the Final Decision and Order (FDO) in this case. The County filed its response on February 19, 2009, beyond the five days allowed by WAC 242-02-832(1). Therefore, the Board will not consider the County's response.

A. Amendment of the Compliance Schedule

DCC requests the Board modify the compliance schedule set out in the CO. DCC notes that the current compliance schedule calls for a September 10, 2009 compliance hearing. Counsel for DCC will be out of state and unavailable from September 5 to15, 2009 and requests that the Board reschedule the compliance hearing to a date either before the 5th or following the 15th.[6]

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[5] DCC Motion to Strike, at 1.

[6] Motion for Reconsideration, at 1.

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Subsequent to the issuance of the CO, on February 4, 2009, the Board issued an order granting a second extension of the compliance period regarding rural densities (Issue 8). The compliance hearing on that matter was set for September 11, 2009. By separate Motion, DCC has sought a modification of that schedule as well. Therefore the Board will amend the date of that compliance schedule and both matters will be heard together on September 17, 2009.

***Conclusion**:* DCC's Motions to change the compliance schedules are GRANTED. Both matters will be heard on September 17, 2009.

B. Motion for Reconsideration

DCC argues that the Board committed an error of fact and law when it found that the existence of a fire station and PUD substation on land adjacent to the Clallam Log Yard warranted the extension of the Laird's LAMIRD West logical outer boundary (LOB) north to Power Plant Road.[7] DCC argues that the Board allows commercial and industrial uses on this site based on the existence of non-commercial and non-industrial development. DCC is mistaken in focusing on the zoning classifications of the land uses found between Granite Road and Power Plant Road. The Board found that this area was characterized by the built environment and this supported the use of Power Plant Road as the LOB. RCW 36.70A.070(5)(d)(iv) provides that physical boundaries such as streets and highways may be used by counties in establishing the LOB. DCC has failed to demonstrate that it was an error of fact or law for the Board to recognize this.

DCC also argues that there is no evidence in the 1990 aerial photograph of any commercial or industrial use on the log yard on July 1, 1990. At most, DCC says, there was an abandoned and unused building on the site. DCC made this argument regarding the effect of non-use of a facility in its earlier objections.[8] As the Board noted in the CO, the question

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[7] Motion for Reconsideration at 2.
[8] DCC Objections at 5.

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of whether the log yard was abandoned is both contested and irrelevant. "[W]hether a prior use has been abandoned is not the relevant inquiry in delineating a LAMIRD but instead one must look to evidence of the built environment" as of July 1, 1990.[9] DCC does not cite to any provision of the GMA or other authority to the contrary.

Finally, DCC argues that the Board should require documentation in the Plan or the Clallam County Code of the parameters of the Laird's LAMIRD as of July 1, 1990, so that future decision makers would have this available as a guideline. In fact, several sections of the Clallam County Code provide that the use allowed in a particular zone must be "similar to the use, scale, size or intensity as the uses that existed in the area prior to or as of July 1, 1990."[10] The Board agrees that specification of those parameters would provide great assistance to the County in determining the nature of future land uses to be allowed in its LAMIRDs. However, no such requirement exists in the GMA, and it was not error for the Board to fail to impose such a requirement. In any event, as a result of this appeal, an extensive record has been compiled regarding the state of the built environment in the County's LAMIRDs as of July 1, 1990, which the County and the public can rely upon for future land use decisions.

Conclusion: DCC's motion for reconsideration of the Compliance Order with regard to Lairds' LAMIRD is DENIED.

ORDER

Having reviewed Petitioner DCC's Motions for Reconsideration and to Change Schedules and the relevant provisions of the GMA and the Board's Rules of Practice and Procedure, DCC's Motion for Reconsideration and Motion for Change in Schedule is hereby DENIED, in part, and GRANTED, in part, as follows:

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[9] Compliance Order at 18-19.

[10] See, eg. CCC 33.15.040(9). The Board has previously found the use of the timeframe "prior to or as of July 1, 1990) noncompliant.

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1. The compliance hearing for areas of noncompliance identified in the CO, as well as for rural densities (Issue 8), shall be rescheduled to September 17, 2009.
2. DCC's motion for reconsideration of those portions of the CO addressing Laird's LAMIRD West and the County's definition of the 1990 existing environment are DENIED.

A revised compliance schedule is set forth below:

Item	Date Due
Compliance Due on identified areas of noncompliance	**July 30, 2009**
Compliance Report and Index to Compliance Record	August 6, 2009
Objections to a Finding of Compliance	August 27, 2009
Response to Objections	September 3, 2009
Compliance Hearing	September 17, 2009

SO ORDERED this 20th day of February 2009.

_____
James McNamara, Board Member

_____
William Roehl, Board Member

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

<u>Judicial Review</u>. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

<u>Enforcement.</u> The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW

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34.05.542. Service on the Board may be accomplished in person, by fax or by mail, but service on the Board means actual receipt of the document at the Board office 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).

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