

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

JUDY HEYDRICK, STAN HEYDRICK, and KERRY OURADA)	Case No. 06-3-0037
)	
Petitioners,)	<i>(Heydrick)</i>
)	
v.)	
)	
CITY OF SULTAN,)	FINAL DECISION and ORDER
)	
Respondent.)	
)	

SYNOPSIS

In December 2006, the City of Sultan adopted new and revised critical areas regulations. The standard buffer widths required for wetlands in the City are: Category 1 = 150 feet, Category 2 = 100 feet, and Category 3 and 4 = 50 feet. However, for wetlands of less than 4000 square feet, with buffer averaging or buffer reduction, the buffers could be reduced to 35 feet if certain performance standards are met. Petitioners filed an appeal of this action challenging only the City’s “buffer averaging” and “buffer reduction” provisions as applied to the City’s small wetlands.

The Board found that these two buffer-altering options are only available when the proposed alteration and design results in a net improvement of the functions and values of the particular wetland. Although the buffer may be reduced, the City has performance standards to ensure that the functions and the values of the affected wetland are maintained and improved. Therefore, the Board concluded that the challenged provisions of the City’s critical areas regulations complied with the GMA.

I. BACKGROUND

In December of 2006, Petitioners filed a petition for review (**PFR**) challenging new Critical Areas Regulations (**CARs**) adopted by the City of Sultan – Ordinance No. 918-6. Petitioners focused on the CARs as they related to the City’s procedures for buffering small wetlands.

In February 2007, the Board held the prehearing conference and issued its Prehearing Order (**PHO**) setting the final schedule and framing the Legal Issues to be resolved by the Board. There were no dispositive motions or motions to supplement the record

received in this proceeding. Consequently, the record for this proceeding consists of the 33 items identified in the City of Sultan's Amended Index of the Record.

On March 30, 2007, the Board received a copy of Ordinance No. 947-07, amending the City's CARs. Within the next few weeks, the Board received Petitioners' prehearing brief and the City's response brief, each with attached exhibits. Petitioners did not file a reply brief. Petitioners' brief is hereafter referred to as "**Heydrick PHB**" and the City's brief is hereafter referred to as "**Sultan Response**."

On May 7, 2007, at 10:00 a.m. the Board assembled for the Hearing on the Merits (**HOM**). Respondent City of Sultan was in attendance, but neither Petitioners Heydrick nor Ourada appeared. The Board learned that Petitioners had mistakenly believed the HOM was scheduled for May 9, 2007 and were therefore not in attendance on May 7, 2007, for the HOM. The Board went on the record to indicate that Petitioners would not be attending the HOM, and that the Board would not hear argument from the City, but would resolve the matter based upon the written materials and briefing provided by the parties. The Board adjourned at approximately 10:40 a.m.

II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF and STANDARD OF REVIEW

Upon receipt of a petition challenging a local jurisdiction's GMA actions, the Legislature directed the Boards to hear and determine whether the challenged actions were in compliance with the requirements and goals of the Act. *See* RCW 36.70A.280. The legislature directed that the Boards "after full consideration of the petition, shall determine whether there is compliance with the requirements of [the GMA]." RCW 36.70A.320(3); *see also*, RCW 36.70A.300(1). *See Lewis County v. Western Washington Growth Management Hearings Board*, 139 P.3d 1096 (2006) ("The Growth Management Hearings Board is charged with adjudicating GMA compliance and invalidating noncompliant plans and development regulations").

Petitioners challenge the City of Sultan's Ordinance No. 918-06, adopting Critical Areas regulations. Pursuant to RCW 36.70A.320(1), Ordinance No. 918-06 is presumed valid upon adoption.

The burden is on Petitioners to demonstrate that the actions taken by the City of Sultan are not in compliance with the goals and requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action taken by [Sultan] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find Sultan's actions clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

The GMA affirms that local jurisdictions have discretion in adapting the requirements of the GMA to local circumstances and that the Board shall grant deference to local decisions that comply with the goals and requirements of the Act. RCW 36.70A.3201. Pursuant to RCW 36.70A.3201, the Board will grant deference to the City of Sultan in how it plans for growth, provided that its planning actions or policy choices are consistent with, and comply with, the goals and requirements of the GMA. The State Supreme Court's most recent delineation of this required deference states: "We hold that deference to county planning actions that are consistent with the goals and requirements of the GMA . . . cedes only when it is shown that a county's planning action is in fact a 'clearly erroneous' application of the GMA." *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, 154 Wn.2d 224, 248, 110 P.3d 1132 (2005).

The *Quadrant* decision is in accord with prior rulings that "Local discretion is bounded . . . by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearing Board (King County)*, 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). As the Court of Appeals explained, "Consistent with *King County*, and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not 'consistent' with the requirements and goals of the GMA." *Cooper Point Association v. Thurston County*, 108 Wn. App. 429, 444, 31 P.3d 28 (2001); *affirmed Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn2d 1, 15, 57 P.3rd 1156 (2002); *Quadrant*, 154 Wn.2d 224, 240 (2005). And *see*, most recently, *Lewis County*, 139 P.3d at fn. 16: "[T]he GMA says that Board deference to county decisions extends only as far as such decisions comply with GMA goals and requirements. In other words, there are bounds."

The scope of the Board's review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to those issues presented in a timely petition for review.

III. BOARD JURISDICTION, PREFATORY NOTE and PRELIMINARY MATTERS

A. BOARD JURISDICTION

The Board finds that the PFR filed by Petitioners Heydrick and Ourada was timely filed, pursuant to RCW 36.70A.290(2); Petitioners Heydrick and Ourada have standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction over the challenged ordinance, which adopts the City of Sultan's Critical Areas regulations, pursuant to RCW 36.70A.280(1)(a).

B. PREFATORY NOTE

The Action Challenged:

The City of Sultan's Ordinance No. 918-06 adopts the City's Critical Areas regulations. These regulations are codified in the Sultan Municipal Code (SMC) at 16.80.010 through 16.80.230 SMC. Petitioners' challenge is to one section of the SMC dealing with "Regulation of Small Wetlands" – 16.80.110(C) SMC.

Sultan defines "small wetlands" as those wetlands that are less than 4,000 square feet. 16.80.110. Subsection C, of 16.80.110 addresses buffers on small wetlands, allowing alteration of the buffer width through: 1) Averaging Buffer Widths; and 2) Buffer Width Reduction. This is the subsection of Ordinance No. 618-06 that Petitioners challenge.

C. PRELIMINARY MATTERS

The City of Sultan submitted a copy of Ordinance No. 947-07 in order to show it had addressed one of Petitioners' claims. Pursuant to WAC 242-02-660(4), the Board may take official notice of Ordinances adopted by local jurisdictions. The Board takes **official notice** of Ordinance No. 947-07.

IV. LEGAL ISSUES AND DISCUSSION

A. LEGAL ISSUE NO. 1

Petitioners' Legal Issue 1, as stated in the PFR and PHO, provides:

- A. Did the City of Sultan violate RCW 36.70A.020(10), .060, .130, .172 and .175 by failing to adequately protect streams in SMC 16.80.110, the Critical Area Regulation subsection dealing with Small Wetlands under 4,000 square feet?*

Heydrick PFR, at 3; 4/13/07 PHO, at 7.

At the prehearing conference, the parties discussed an error to the language of SMC 16.80.110 regarding streams. The City indicated that it could easily correct the error, and on March 30, 2007, provided a copy of recently-adopted Ordinance No. 947-07 to the Board. The Board has taken official notice of Ordinance No. 947-07.

In their prehearing brief, under the heading of Legal Issue 1, Petitioners state, "Petitioners thank the City of Sultan for correcting the errors in SMC 16.80.110C, the critical area ordinance subsection regulating small wetlands. Heydrick PHB, at 1. Consequently, the Board dismisses Legal Issue No. 1.

Conclusion

The Board finds and concludes that the City of Sultan's adoption of Ordinance No. 947-07 allays the challenge presented by Petitioners in Legal Issue No. 1. Legal Issue No. 1 is **dismissed with prejudice**.

B. LEGAL ISSUE NO. 2

Petitioners' Legal Issue 2, as stated in the PFR and PHO, provides:

B. Did the City of Sultan violate RCW 36.70A.020(10), .060, .130, .172 and .175 by offering less than BAS protections for small wetlands in SMC 16.80.110 by providing inadequate buffer widths?

Heydrick PFR, at 3; 4/13/07 PHO, at 7.

Applicable Law

Goal 10 [RCW 36.70A.020(10)] provides, "Protect the environment and enhance the state's high quality of life, including air and water quality and the availability of water.

RCW 36.70A.060(2) requires counties and cities to "adopt development regulations to protect critical areas. . ."

RCW 36.70A.130(c) requires a periodic review and evaluation of development regulations, including critical areas regulations.

RCW 36.70A.175 requires the delineation of regulated wetlands to be done in accordance with the Department of Ecology's (**DOE**) manual adopted pursuant to RCW 90.58.380 [DOE's Wetland Delineation Manual].

However, the focal point of Petitioners' challenge is RCW 36.70A.172(1) which provides in relevant part,

*In designating and protecting critical areas under this chapter, counties and cities, shall include the best available science [**BAS**] in developing policies and development regulations to protect the functions and values of critical areas.*

(Emphasis supplied).

Discussion

Context:

SMC 16.80.100(B) establishes four wetland categories for the City of Sultan – Categories 1, 2, 3 and 4. The categories are defined by the different “scores” that are determined in rating the functions of various wetlands. The higher the wetland rating score, the higher the wetland category.

SMC 16.80.150(B) sets the *standard buffer widths* for the four categories of wetlands in Sultan. This section of the Sultan CARs provides:

Standard required widths for wetland buffers are as follows:

1. For Category 1 wetlands: 150 feet
2. For Category 2 wetlands: 100 feet
3. For Category 3 wetlands: 50 feet; and
4. For Category 4 wetlands: 50 feet.

Ex. 2. SMC 16.80.150(B).

The City also has adopted Stream and Wetland performance standards that apply to all development adjacent to wetlands. SMC 16.80.180 provides:

Development on sites with a wetland, stream or buffers shall incorporate the following performance standards in design of the development, as applicable:

- A. Lights shall be directed away from the wetland or stream
- B. Activity that generates noise such as parking lots, generators, and residential uses, shall be located away from the wetland or stream, or any noise shall be minimized through the use of design and insulation techniques.
- C. Toxic runoff from new impervious areas shall be routed away from the wetland or stream, and shall be 100% contained.
- D. Runoff from other impervious surfaces shall be infiltrated into the buffer.
- E. The outer edge of the wetland or stream critical area buffer shall be planted with dense vegetation to limit pet or human use.

Ex. 2. SMC 16.80.180

The challenged section of Sultan’s Critical Area regulations – SMC 16.80.110(C), as amended by Ordinance No 947-07, provides [provisions specifically challenged by Petitioners are underlined]:

C. Buffers of a small wetland¹ may be altered only when the alteration and design will result in a net improvement of the function and value of the wetland and their buffer.

1. Averaging Buffer Widths. The width of a buffer of a small wetland may be averaged, thereby reducing the width of a portion of the buffer and increasing the width of another portion, *if all* of the following requirements are met:
 - a. Averaging will not impair or reduce the habitat, water quality purification and enhancement, storm water detention, groundwater recharge, shoreline protection and erosion protection, and other functions of the wetland buffer;
 - b. The total area of the buffer on the subject property is not less than the buffer which would be required if averaging were not allowed; and
 - c. No part of the width of the buffer is less than 75 percent of the required width or 35 feet, whichever is greater.

2. Buffer Width Reduction. Buffer widths of a small wetland may be reduced if the buffer is enhanced in accordance with the following requirements:
 - a. Buffers, or buffers required after buffer averaging, will have a minimal functional value due to existing physical characteristics;
 - b. The applicant demonstrates that proposed buffer enhancement, together with proposed buffer width reduction, will result in an increase in the functional value of the buffer when compared with the functional value of the standard buffer;
 - c. The applicant includes a comparative analysis of buffer values prior to and after enhancement, and demonstrates compliance with this chapter, as part of the critical areas study required by SMC 16.80.060.
 - d. The buffer width is not reduced below 50 percent of the standard buffer width, or 35 feet, whichever is greater, and the total buffer area reduction is not less than 75 per cent of the total standard buffer area required by 16.80.120(A) or (B) before reduction; and
 - e. The functional values of the wetland protected by the buffer are not decreased.

¹ SMC 16.80.110 defines: “Small wetlands are those that are less than 4,000 square feet.”

Ex. 2. SMC 16.80.110(C)(1) and (2), (emphasis supplied).

Thus, there are two options for altering the standard buffers of wetlands that are less than 4,000 square feet in size: 1) the buffer width can be averaged or 2) the buffer width can be reduced. However, these buffer-altering options are *only [available] when the alteration and design will result in a net improvement of the functions and values.* See SMC 16.80.110(C). The performance measures of SMC 16.80.180 apply in either situation.

Position of the Parties:

In their opening brief, Petitioners succinctly state their challenge: “Specifically, Petitioners contest the regulatory 35-foot minimum wetland buffers per SMC 16.80.110(C)(1)(c) and (2)(d) on the basis of adequacy and the lack of BAS.” Heydrick PHB, at 1. Heydrick asserts that BAS, according to DOE wetland materials and manuals, “simply does not support buffers less than 50 feet.” *Id.* at 3.

To support their position, Petitioners refer to comment letters from DOE, Department of Fish and Wildlife (**WDFW**), and Futurewise. See Exs. 22, 23, 21, 29, 30, 31, 32, 33, and 19, respectively. Each letter comments on the City’s proposed buffer “averaging” or “reduction” provisions. Heydrick PHB, at 5-8.

The City argues that, pursuant to SMC 16.80.110(C)(1), all the criteria must be met to pursue buffer averaging. The City states, “[B]uffer averaging is only allowed where there is no impairment or reduction in function, the total area of the buffer is not reduced, and the minimum buffer is not less than 75% of the required width or 35 feet.” Sultan Response, at 3.

Likewise, the City asserts that pursuant to SMC 16.80.110(C)(2), the buffer reduction option is limited. The City states, “[B]uffer reduction is only allowed where the minimal functional value of the buffer due to its physical characteristics is preserved, enhancement is demonstrated to increase the functional value of the buffer, this demonstration contains a comparative analysis, 75% of the buffer area is preserved, and a buffer is a minimum of 35 feet, and the functional value is preserved.” *Id.* at 4.

The City also addresses prior CPSGMHB decisions on critical areas regulations related to wetlands and noting that Sultan’s Wetland’s provisions were consistent with those prior Board rulings. *Id.* at 4-5. The City also contends that it considered, addressed, and often, followed the suggestions of DOE and WDFW. *Id.* at 6-9.

Board Discussion:

The most striking fact in this case is that it is *uncontested* that the “standard buffer widths” adopted by the City of Sultan [See SMC 16.80.150(B), *infra*] are based upon BAS and designed to protect the functions and values of wetlands. It is also significant

that the challenged provisions only apply to small wetlands, those that Sultan has defined as being less than 4000 square feet.² In practice, given the standard buffer widths for Category 1 and 2 wetlands, the minimum 35-foot buffer width would only be applicable to lower-functioning small wetlands – Category 3 and 4. In essence, Petitioners challenge the “exception” – not the “rule” – in challenging the City’s buffer averaging and buffer reduction provisions for small wetlands.

Petitioner quotes DOE’s letter of January 25, 2006 to the City’s consultant, noting in particular,

The buffer width reduction proposed in this section would allow a buffer to be reduced by up to 50% of the required width, to a minimum of 35 feet. Ecology has found that buffers of this size provide little or no protection to functions of the adjacent wetland area. [Ecology’s recommended buffer widths assume a well-vegetated and functioning buffer.] Where the buffer does not adequately protect wetland functions, the buffer should be expanded, or kept at the standard width and enhanced, but not reduced. Ecology recommends revising C.2 to restrict buffer reductions to areas where existing roads or structures lie within the buffer or where an applicant is collaborating on a rural stewardship [or farm management plan]. The proposed language poses a high risk of degradation to existing wetland functions.

Heydrick PHB, at 5; Ex. 22, at 3 [bracketed language in Ex. 22, not in the PHB.]

The City counters this by noting that:

Ultimately, even DOE supported Sultan’s actions. In a letter dated April 13, 2006 Laura Casey, Wetlands Specialist at DOE, wrote to the City and advised: “However, we would like to clarify that the wetland buffer widths proposed by Sultan are considered to be adequate by Ecology, based upon our review of the literature. . .” Ex. 23, at 3. A factor in this was Sultan’s performance standards, SMC 16.80.180 [quoted *infra*], which applies to all buffers, even if the buffers are averaged or reduced.

Sultan Response, at 8; *see also* Ex. 23, at 3. The Board notes that Petitioner does not refute this contention from the later letter from DOE. The Board also notes that the preamble to SMC 16.110(C) states:

² In *Hood Canal v. Kitsap County*, CPSGMHB Case No. 06-3-0012c, Final Decision and Order, (Aug. 28, 2006), at 7, the Board noted that DOE had developed strategies to exempt or minimize the regulation of wetlands within this size range if certain criteria were met. The City of Sultan appears to have adopted DOE’s strategies.

Buffers of a small wetland *may be altered only when* the alteration and design will *result in a net improvement of the function and value* of the wetland and their buffer.

It appears to the Board that this provision, coupled with the performance standards of SMC 16.80.180, adequately addresses the concerns raised by DOE. If the functions and values of the wetland cannot be *improved*, the reduction cannot occur.

The City also acknowledges that WDFW offered varying views of the averaging and reduction provisions, but states:

However, it is noted that the Department of Fish and Wildlife in a letter from Pamela Erstad, dated March 6, 2006, concluded as follows: “WDFW commends the town of Sultan for determining adequate [wetland] buffer widths based upon habitat scores at the site. Ex. 30, at 1”

Sultan Response, at 9; *see also* Ex. 30 at 1. The remainder of WDFW’s concerns raised in that letter goes on to discuss *stream* buffers, which are not at issue in the present proceeding. Again, the preamble language of SMC 16.80.110(C), coupled with the City’s performance standards applicable to *all* wetlands, appears to address the concerns raised by WDFW.

Likewise, Futurewise’s urging that buffer averaging or reduction should not yield a buffer of less than 50 feet [Heydrick PHB, at 6; and Ex. 19, at 5] does not appear to recognize the preamble language of 16.80.110 or the performance standards’ requirement for either averaging or buffering.

Based upon the Board’s reading of the Ordinance, as discussed *supra*, the Board finds and concludes that Petitioners have **failed to carry the burden of proof** in demonstrating that the City of Sultan’s critical areas regulations, specifically SMC 16.80.110(C)(1)(c) and 2(d) do not comply with the provisions of RCW 36.70A.020(10), .060, .130, .172 and .175. Petitioners offer cursory argument on many of these GMA provisions. The Board’s review of the challenged provisions leads to the conclusion that the City of Sultan has **complied** with the challenged GMA critical area requirements.

Conclusion

Petitioners have **failed to carry the burden of proof** in demonstrating that the City of Sultan’s critical areas regulations, specifically SMC 16.80.110(C)(1)(c) and 2(d) do not comply with the provisions of RCW 36.70A.020(10), .060, .130, .172 and .175. The Board’s review of the challenged provisions leads to the conclusion that the City of Sultan has **complied** with the challenged GMA critical area requirements.

V. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS:

- Petitioners have **failed to carry the burden of proof** in demonstrating that the City of Sultan's adoption of Ordinance No. 918-6, as amended by Ordinance No. 947-7, regarding the City's critical areas regulations, are noncompliant with RCW 36.70A.020(10), .060, .130, .172 and .175. The Board concludes that the City of Sultan has **complied** with the challenged provisions.
- Petitioners challenge is **dismissed with prejudice** and the matter of *Heydrick v. City of Sultan*, CPSGMHB Case No. 06-3-0037 is **closed**.

So ORDERED this 8th day of June, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.³

³ Pursuant to RCW 36.70A.300 this is a final order of the Board.

APPENDIX A

Procedural Background

A. General

On December 27, 2006, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Judy and Stan Heydrick and Kerry Ourada (**Petitioners** or **Heydrick**). The matter was assigned Case No. 06-3-0037, and is referred to as *Heydrick v. City of Sultan*. Board member Ed McGuire is presiding officer (**PO**) in this matter. Petitioners challenge the City of Sultan's (**Respondent** or **City** or **Sultan**) adoption of Ordinance No. 918-06, creating a new chapter of the City's municipal code, Chapter 16.80, to be known as the City's Critical Areas Regulations. In particular, the Petitioners take issue with Section 16.80.110, dealing with the regulation of small wetlands. The basis for the challenge is noncompliance with the Growth Management Act (**GMA** or **Act**).

On December 28, 2006, the Board issued a "Notice of Hearing" in the above-captioned case. The Order set a date for a prehearing conference (**PHC**) and established a tentative schedule for the case.

On January 17, 2007, at the request of Sultan, the Board issued an "Order Amending Schedule." This Order rescheduled the PHC for February 5, 2007 and rescheduled the tentative Hearing on the Merits (**HOM**) to April 30, 2007.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. Filing means actual receipt of the document at the Board office. 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.

Judicial Review. 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 Enforcement. 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 34.05.542. 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 service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

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

On February 5, 2007, the Board conducted the PHC; and on February 12, 2007, the Board issued a “Prehearing Order” setting the schedule⁴ and Legal Issues to be decided by the Board. On February 13, 2007 the Board issued a “Corrected Prehearing Order.”⁵”

B. Motions to Supplement the Record and Amend the Index

On February 5, 2007, the Board received “Respondent’s Index of Record” (**Index**). The City’s Index listed 28 items.

On February 16, 2007, the Board received “Respondent’s Amended Index of the Record.” The Amended Index listed 33 items.

There were no motions to supplement the Index.

C. Dispositive Motions

There were no dispositive motions filed in this matter.

D. Briefing and Hearing on the Merits

On March 30, 2007,⁶ the Board received “Respondent’s Submission of Ordinance No. 947-07 Amending Critical Areas Regulations,” with an attached signed copy of Ordinance No. 947-07.

On March 30, 2007, the Board received “Petitioner’s Prehearing Brief” (**Heydrick PHB**), with 28 attached exhibits from the Index, including 9 excerpts from the State Department of Ecology’s Wetlands in Washington, Volumes I and II.

On April 12, 2007, the Board received “Respondent City of Sultan’s Prehearing Brief” (**Sultan Response**), with eight attached exhibits from the Index.

Petitioners did not file a reply brief. All briefs were timely filed.

On May 7, 2007, the Board assembled at 10:00 a.m. for the Hearing on the Merits at the Board’s offices in Suite 2356, 800 5th Avenue, Seattle, Washington. Board members Edward G. McGuire, Presiding Officer and Margaret Pageler were present for the Board. Board Law Clerk, Julie Taylor, was also present. Respondent City of Sultan was represented by Thom Graafstra. Rick Cisar and Deborah Knight from the City of Sultan

⁴ The PHO set May 7, 2007, at 10:00 a.m., as the date for the Hearing on the Merits.

⁵ The Corrected PHO affirmed May 7, 2007, at 10:00 a.m., as the date for the Hearing on the Merits.

⁶ The Board received, via U.S. mail, a copy of this pleading and attachment on April 3, 2007.

were also in attendance. Court reporting services were provided by Katie A. Eskew of Byers and Anderson, Inc. Petitioners were not present.⁷

At approximately 10:30 a.m., the Board went on the record to indicate that the Petitioners would not be attending the HOM, and that the Board would hear no argument from the City, but resolve the matter based upon the written materials and briefing provided by the parties. The Board adjourned at approximately 10:40 a.m.

⁷ The Board contacted the home of Petitioner Ourada and learned that the Petitioners thought the HOM was scheduled for May 9, 2007.