

**STATE OF WASHINGTON
EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD**

SAVE OUR BUTTE SAVE OUR)
BASIN SOCIETY, Petitioner)

ICICLE CANYON COALITION,)
Petitioner)

N. CENTRAL WASHINGTON)
AUDUBON SOCIETY, Petitioner)

SUZANNE SABERHAGEN,)
Petitioner)

) CONSOLIDATED
CASE NO. 94-1-0015

SAVE CHELAN ALLIANCE,)
Petitioner)

LEAF ADOPT-A-FOREST,)
Petitioner)

YAKAMA INDIAN NATION,)
Petitioner)

) **COMPLIANCE HEARING**
ORDER

CITIZENS FOR RURAL ENVIRONMENT)
AND AGRICULTURAL LAND,)
Petitioner)

CHELAN-DOUGLAS LAND TRUST,)
Petitioner)

CHELAN COUNTY CONSERVATION)
DISTRICT, Petitioner)

1000 FRIENDS OF WASHINGTON,)
Petitioner)

NORTH CASCADES CONSERVATION)
COUNCIL AND WASHINGTON ENVIRON-)
MENTAL COUNCIL Petitioner)

STATE OF WASHINGTON,)
Petitioner)

vs.)
)
CHELAN COUNTY, Respondent)

PROCEDURAL HISTORY

On August 8, 1994, the Board, in its final decision and order, found that Chelan County's Resolution No. 93-158 was not in compliance with the following sections of the Growth Management Act, RCW 36.70A.020, RCW 36.70A.060, and RECW 36.70A.170. The Resolution was remanded to Chelan County for further consideration and revision to bring it into compliance with the requirements of the Growth Management Act by December 8, 1994.

The Board found shortcomings in the County's Resolution regarding four primary legal issues.

To achieve compliance with the Growth Management Act, the County needed to do the following:

1. Meet the requirement of RCW 36.70A.170 to designate agricultural lands of long-term commercial significance and adopt development regulations that assure the conservation of these resource lands as required by RCW 36.70A.060 (1);
2. Adopt development regulations that assure the conservation of forest lands of long-term commercial significance designated under RCW 36.70A.170 as required by RCW 36.70A.060(1);
3. Adopt development regulations that assure the conservation of mineral resource lands designated under RCW 36.70A.170 as required by RCW

36.70A.060(1)^[1]

4. Meet the requirement of RCW 36.70A.170 to designate critical areas and adopt development regulations that protect these areas as required by RCW 36.70A.060(2).

In its final order the Board made an additional finding that the Resolution failed to comply with planning goal no. 8, to maintain and enhance natural resource-based industries, under RCW 36.70A.020. The substance of this issue involves the first three issues listed above; compliance with these issues will yield compliance with planning goal no. 8.

On December 8, 1994, Chelan County filed Resolution 94-160 with the Board. This Resolution amended Resolution 93-158 by revising interim regulations for forest and mineral resource lands. Concurrently Chelan County filed a motion requesting a continuance until April 7, 1995 to complete revisions to designations and regulations pertaining to agricultural resource lands and critical areas. A new issue has developed concerning whether the County fulfilled the public participation requirements of the Growth Management Act when it adopted Resolution 94-160.

Petitioners Save Our Butte Save Our Basin Society, Save Chelan Alliance, Suzanne Saberhagen, Icicle Canyon Coalition, State of Washington, Leavenworth Audubon Adopt-A-Forest, North Central Washington Audubon Society, Chelan-Douglas Land Trust, Yakama Indian Nation, North Cascades Conservation Council, Washington Environmental Council and the State of Washington requested denial of the motion for continuance asserting that the County had had both sufficient time and opportunity to complete the process. The one exception to Petitioners' request for denial came from the Chelan County Conservation District.

On December 15, 1994, Petitioners North Cascades Conservation Council et a. pursuant to RCW 36.70A.330 filed a motion for a compliance hearing.

On December 15, 1994, the Board issued an Order Denying Chelan County's Motion for Continuance and Granting Petitioners' North Cascades Conservation Council et. al. Motion for a Compliance Hearing. The Board found that it was statutorily prohibited from granting the County's Motion.

On December 20, 1994, the Board received a Motion and Memorandum for Reconsideration from Chelan County requesting a 58 day continuance to February 4, 1995 and asking that the compliance hearing be stricken.

On December 21, 1994, the Board issued an Order Denying Chelan County's Motion for Reconsideration and reaffirming the compliance hearing date. RCW 36.70A.330(2) provides that the compliance hearing shall be given the highest priority by the Board and a finding shall be issued within 45 days of the motion. This section prohibits granting the County's second request for extension, although the date for the compliance hearing effectively granted the majority of the time requested by the County.

Prior to the compliance hearing, the Board received written submissions from various Petitioners as well as the County.

On January 10, 1995, a hearing was held at 10:30 a.m. in the Board's office in Yakima, Washington in Suite 818 Larson Building, 6 South Second Street. The parties participated either

in person or telephonically. Written submissions from the Parties were accepted after the Hearing for a period of three days.

DISCUSSION

-
-
-

First regarding the question of compliance with the public participation requirements of the Growth Management Act involving the adoption of Resolution 94-160. Public participation is a fundamental concept and not to be taken lightly, but RCW 36.70A.330 (1) states that a compliance hearing is for the purpose of determining whether the local government “is in compliance with the requirements of this chapter”. The question to be determined is whether the governmental action, the Resolution in this case, substantively meets the requirements of the Growth Management Act. The question of public participation would be considered as a factor, but it would not necessarily invalidate the resolution, if the test of substantive compliance was met.

It is a fundamental tenet of the Growth Management Act that local decision-makers have discretion to implement the Act and that a variety of approaches are both accepted and encouraged, provided the minimum requirements established by the act are met. The method for achieving compliance rests wit local government.

Because board decision must be based on the record, it is helpful to both the boards and the citizens, if local governments show their work and indicate the parts of the record upon which they have relied.

The concept of “showing your work”, is neither complex, nor burdensome. It involves a reasoned discussion of the issue in question, the selection of a choice that meets the minimum requirements established by the Growth Management Act, and is supported by the record. It need not require the use of consultants and outside experts, the local people and their government officials know their area.

In the context of the initial discussion set forth above, the Board reviewed Resolution No. 94-160 amending Resolution 93-158 by adopting revised interim regulations for forest and mineral resource lands. The Board will first discuss legal issues Numbers 1 and 4 listed above.

No. 1. Meet the requirement of RCW 36.70A.170 to designate agricultural lands of long-term commercial significance and adopt development regulations that assure the conservation of these resource lands as required by RCW 36.70A.060 (1);

No. 4. Meet the requirement of RCW 36.70A.170 to designate critical areas and adopt development regulations that protect these areas as required by RCW 36.70A.060(2).

The County is not in compliance with the Growth Management Act in both of these areas. The County failed to meet the December 8, 1994 deadline for both agricultural resource lands and critical areas as stated in its memorandum submitted for the compliance hearing. At the time of the compliance hearing, the County had not yet made an enactment regarding either of these areas and was unable to suggest when such an enactment would be completed. Since this date, we have received no indication that the County has progressed further.

Much of the initial work on these issues had been done by the time the Board issued its Final Order on August 8, 1994. Both the citizen advisory committees and the staff have covered these areas in great detail. The County has had the time, resources and information necessary to complete these tasks—sit simply has not made a decision. [\[2\]](#)

The Board recognizes that the Growth Management Act requires that difficult and sometimes contentious decisions must be made and made within the limits of the Growth Management Act. The legislature, however, has gone to considerable time and effort to establish the minimum requirements of the Growth Management Act.

It is worth noting that all counties, whether planning or non-planning, must designate agricultural resource lands and critical areas. All counties must protect critical areas.

RCW 36.70A.060 and .170. These designations and protections provide the basis for further planning. It is nearly three years after these initial designations were to have been made.

FINDING: The County is not in compliance with either the requirements of RCW 36.70A.170 to designate agricultural resource lands or critical areas or RCW 36.70A.060 to assure the conservation of these resource lands and the protection of critical areas.

2. Adopt development regulations that assure the conservation of forest lands of long-term commercial significance designated under RCW 36.70A.170 as required by RCW 36.70A.060(1);

In the Board's August 8, 1994 Order, there were two primary items of non-compliance, the inadequacy of the minimum lot size and the lack of sufficient set-back requirements for development on adjacent lands.

The County has adopted a 20 acre minimum lot size which, while it may be on the lower side of what the record indicates is adequate, I, nevertheless, within an acceptable range of discretion granted to the County. While some may desire a large minimum lot size, there is no requirement that they adopt a larger number than that supportable by the record. The Board finds the 20 acre minimum lot size acceptable.

The Board also finds that the set-backs have been modified so as to meet the requirements of the Act. Additionally, the modifications appear to make the Resolution consistent with other laws and regulations government forest practices and foresters' liability.

Finding: The Board finds that the County is in compliance with the requirement of RCW 36.70A.060 to assure the conservation of forest resource lands.

3. Adopt development regulations that assure the conservation of mineral resource lands designated under RCW 36.70A.170 as required by RCW 36.70A.060(1)

Resolution 94-160 improved the mineral resource land protection in several ways. It extends the notice requirement from 300 to 500 feet for adjoining property owners; it requires that access for new developments adjacent to mineral resource lands shall be located so as to avoid conflicts with mineral resource related activities and it establishes

limits on nuisance claims. In the compliance hearing, the State of Washington, the primary party previously challenging the adequacy of the mineral resource lands protections, stated it would not challenge the modifications since the County had made a good faith effort to comply.

Finding: The Board finds that the County is in compliance with the requirements of Growth Management Act to assure the conservation of mineral resource lands.

Conclusion

-
-
-
The Board finds that Chelan County is not in compliance with the Growth Management Act because both Resolution 93-158 and Resolution 94-160:

- 1) Fail to designate and conserve agricultural resource lands as required by RCW 36.70A.060 and 36.70A.170, and
- 2) Fail to designate and protect critical areas as required by RCW 36.70A.060 and 36.70A.170.

The Board finds that Chelan County is in compliance with the Growth Management Act in the matter of assurance of conservation of both forest resource lands and mineral resource lands.

SO ORDERED this 30th day of January, 1995.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

Tom A. Williams, Presiding Officer
Judy Wall, Board Member
Graham Tollefson, Board Member

[1] Some of the Parties have argued that mineral resource land designations fail to comply with RCW 36.70A.170. This may or may not be the case, however, the issue was not listed in either our Prehearing or final order and is not being considered by this Board in this proceeding.

[2] At the time the County was to have completed the work involved in this compliance hearing, it apparently had little difficulty completing Resolution 94-145, Chelan County Government Coordinating Ordinance for Acts Affecting Land and Natural Resource Use.