

State of Washington

**GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON**

GARY D. WOODMANSEE, AND)
CONCERNED FRIENDS OF FERRY) Case No. 95-1-0010
COUNTY,)
Petitioners) FINAL DECISION AND ORDER
)
vs.)
)
FERRY COUNTY, Respondent)
)

Procedural History

On November 15, 1995, Gary D. Woodmansee and Concerned Friends of Ferry County by and through their representative, David L. Robinson, filed a Petition for Review with the Eastern Washington Growth Management Hearings Board (the Board).

On December 6, 1995, Ferry County filed its Notice of Appearance and Answer.

On November 20, 1995 the Board issued a Notice setting the hearing on the merits for March 13, 1995 at 10:00 a.m. and scheduling a prehearing conference for December 14, 1995.

On December 14, 1995, the Board held a prehearing conference in its office at 10:00 a.m. The motions and briefing schedule was set and the legal issues were determined.

On December 18, 1996, Allen C. Nielson, Prosecuting Attorney for Ferry County, filed a Motion for Specificity.

On January 10, 1996, Petitioners Woodmansee and Concerned Friends of Ferry County filed their Response to Motion for Specificity.

On January 18, 1996, Ferry County filed their Rebuttal to Motions Response.

On January 22, 1996, Petitioners Woodmansee and Concerned Friends of Ferry County filed their Proposed Statement of Legal Issues/Revised in Response to Motion for Specificity.

On January 23, 1996 at 10:00 a.m., the Board held a Motions Hearing by teleconference in their office at Suite 818Larson Building, 6 South Second Street, Yakima, Washington.

After discussion and hearing from the parties involved, the Board granted the Respondent's Motion for Specificity and adopted the Petitioners' Revised Legal Issues.

On April 9, 1996, the Board held a Hearing on the Merits at 10:00 a.m. at the Kiwanis Community Hall in Republic, Washington. All Board members were present with D. E. "Skip" Chilberg serving as the Presiding Officer. Also present was Byrl Cinnamon, Court Reporter. Present for Petitioners were Gary D. Woodmansee, Dave Robinson for Concerned Friends of Ferry County and their attorney Terry Sawyer. Present for Ferry County was Allen Nielson, Prosecuting Attorney.

OVERVIEW

The Eastern Washington Growth Management Hearings Board will view the issues in the context of Ferry County. We recognize that Ferry County has a limited tax base, and consequently limited resources, to address growth related issues. We also recognize that Ferry County Commissioners are elected to decide complex political issues. The Board will avoid substitution of our view point for the viewpoints of those elected officials. We presume validity of Ferry County's decisions and have been presented with no preponderance of evidence that Ferry County's intention is non-compliance with the Growth Management Act (GMA). Rather, evidence presented shows Ferry County does intend to comply with the Act, albeit the minimum requirements of the Act, and within the constraints of very limited resources.

Both Petitioners and Ferry County, as well as the state Department of Community, Trade and Economic Development (DCTED), recognize that compliance with the Act is an on-going process. The process is not complete with completion of the Comprehensive Plan. In Ferry County, again, as all parties recognize, the Comprehensive Plan needs additional work for completion, and will be amended as necessary in the future. Our analysis will identify those issues where additional work is needed.

This final order and decision will address each issue in order as identified in our Order Granting

Motion for Specificity and Revision of Issues dated January 23, 1996.

Standing

During the hearing on the merits, Respondent argued for dismissal of issues one, two and five, because it asserted Petitioner failed to file a timely petition. The Board, rejecting this argument, finds that the County reviewed their interim critical areas' designation in the Comprehensive Plan. The Board agrees with the Central Puget Sound Growth Management Hearings Board and holds that the question of standing is to be interpreted broadly, that any party who appears during the GMA planning process should have the ability to request review of the resulting document or any portion of that document. Sky Valley et al. vs. Snohomish County et al. CPSGMHB Case No. 95-3-0068c, 23. Petitioner has standing to bring these issues.

Issue 1: Does Section 7.4 of the Ferry County Comprehensive Plan (Comprehensive Plan) fail to comply with the Growth Management Act (GMA) requirement to designate critical areas, specifically wetlands, fish and wildlife habitat (including riparian areas), and aquifer recharge areas, as required by RCW 36.70A.170(1) (d)?

Based on arguments of both Petitioner and Respondent, the question to be answered here will be restated to: Does the Ferry County Comprehensive Plan meet the minimum requirements of RCW 36.70A.170(1)(d), specifically, designation of (1) wetlands, (2) fish and wildlife habitat, and (3) aquifer recharge areas?

Common sense, and, as noted by Respondent, this Board's previous decision 94-1-0022, identifies the compliance standard. "Land use designations must provide landowners and public service providers with the information needed to make decisions". Additionally, WAC 365-190-040 (2) (d) states in part, "Logically, the only way to regulate adjacent lands is to know where the protected lands are. Therefore, mapping natural resource lands is a practical way to make regulation effective."

Respondent concedes the desirability of a land use map consistently throughout its brief and argues that Petitioners" ignore that Ferry County intends to locate the critical areas by way of its future land use map." Respondent Briefs. 11. Respondent also argues that the "definitions" for (1) wetland, (2) fish and wildlife habitat, and (3) aquifer recharge areas in the CP meet the minimum requirements for "designation" per RCW 36.70A.170. For the sake of some brevity, the definition for "Wildlife Habitat Conservation Areas", Sec. 7.4.8of CP will be presented here in its entirety for illustrative purposes:

7.4.8 Wildlife Habitat Conservation Areas

Wildlife habitat can be described as the geographic area containing the necessary combinations of food, water and protective cover for the survival and propagation of a species of animals. Habitats differ between species, but are closely related to the plant communities. A single plant community such as a wetland, for example, may provide all the necessary habitat requirements for certain small mammals or amphibians. Larger mammals may require more than one plant community to complete their habitat, such as forest cover and wetlands for food and water. Areas of particular concern have been identified by the Washington Department of Fish and Wildlife Priority Habitat and Species Program. These areas consist primarily of rivers and wetland sites.

Utilizing the "common sense" standard of usefulness for decision-making purposes, this "definition" in lieu of "designation" falls short of the requirements of the law. While the definition is no doubt valid, it provides almost no guidance or usefulness to a landowner or policy-maker for decision making. Similarly, this Board finds the "definitions" for wetlands, fish habitat, and aquifer recharge areas, although adequate as definitions, do not meet the requirements for "designation" of those critical areas.

While RCW 36.70A.170(2) requires only consideration of the applicable Washington Administrative Codes (WACs), specifically WAC 365-190-040, in making critical areas designations, Respondent references these WACs in defense of their action to date, and actions planned for the future. This Board applauds that direction and suggest that compliance with the requirements of RCW 36.70A.170(1)(d) will be attained by continuing the development of the Comprehensive Plan following the guidance provided by WAC 365-190-040.

Conclusion 1. The comprehensive plan fails to meet the requirements of RCW 36.70A.170(1)(d), designation of wetlands, fish and wildlife habitat and aquifer recharge areas.

Issue 2: Do Section 7.4 and Policies L-6, L-17, L-19 and L-21 of the Ferry County Comprehensive Plan fail to comply with GMA requirements that the County shall protect wetlands, fish and wildlife habitat(including riparian areas) and aquifer recharge areas as required in RCW 36.70A.060(2) and RCW 36.70A.020(9) and (10)? Did the County use the Best available Science as required by Section 105,ESHB 1724?

This Board's review of the record, as well as Respondent's brief, indicate a different question must be addressed first. The question is: "Has Ferry County met the requirements of RCW 36.70A.060(2) to protect critical areas?" As both Petitioners and Respondent recognize, the current applicable protective ordinance is the Interim Critical Areas Ordinance, 93-02. Petitioners arguments are directed toward Section 6 of the Comprehensive Plan, "Planning Goals", rather than Ordinance 93-02. This Board agrees with Respondents arguments that the Interim Ordinance

93-02 meets the requirements of RCW 36.70A.060(2). Further, this Board finds that Ferry County, by its adoption of Comprehensive Plan Section 6 has met the procedural requirements of RCW 36.70A.020 (9) and (10). Substantive review of the Policies L-6, L-17, L-19 and L-21 would only be appropriate upon petition to this Board after enactment of regulations superseding Ordinance 93-02.

Therefore, the Board must find the subject policies do meet the requirements of RCW 36.70A.020 (9) and (10). These policies were not intended as protective measures to comply with RCW 36.70A.060(2). A section of ESHB 1724, codified at RCW 36.70A.172, requires that counties use the "best available science" in providing protection for critical areas. While this requirement was not enacted at the time Ordinance 93-02 was adopted, it does apply to this Comprehensive Plan.

This Board feels that the policies expressed in Comprehensive Plan Section 7.4 and Policies L-6, L-17, L-19, and L-21 are not currently at issue as protective measures for wetlands, fish and wildlife habitat, and aquifer recharge areas, since Ordinance 93-02 is still in effect. Thus, if Ordinance 93-02 is the current operating policy for protection, and since Ordinance 93-02 was adopted prior to enactment of RCW 36.70A.172, then Ferry County has met the requirements of the law.

A word of caution, however, seems appropriate. This Board's primary role is to determine compliance with the law. In this instance, we find Ferry County in compliance. A secondary role for this Board is to provide guidance for future actions of jurisdictions to ensure proper implementation and compliance with the Growth Management Act. With this role in mind, this Board recognizes that Petitioners have presented evidence to clearly show that sound scientific evidence was presented to decision makers regarding protection of critical areas. We find no evidence that the "best available science" was even seriously considered, let alone utilized, in developing policies L-6, L-17, L-19, and L-21.

Ferry County is hereby advised to utilize the "best available science" in reviewing the subject policies prior to enacting final development regulations.

Conclusion 2. The current law, the interim critical areas development regulations in Ferry County, are in compliance with RCW 36.70A.060(2). Final development regulations must use the "best available science".

Issue 3: Do Section 7.8.2 and 9.4 of the Ferry County Comprehensive Plan fail to comply with RCW 36.70A.020(1) and (2) because they allow urban densities outside the urban growth area?

Issue #3 could accurately be re-stated as "Can the Comprehensive Plan permit urban densities

without designation of an "Urban Growth Area". Then, the question must be asked: "What constitutes an urban density"? Respondent counters that communities should be allowed to "plan for themselves", and the County did not wish to impose a "list of requirements" for urban services that a UGA designation would entail. This Board supports Ferry County's desire to permit rural communities to "plan for themselves", such as has been accomplished with the Curlew Lake Sub-Area Plan. We feel this approach will be successful in guiding responsible development in other communities, as long as the requirements of the Growth Management Act are met. However, Ferry County's response clearly implies that rural communities should be able to plan for urban densities without being required to provide urban services. We feel compelled to note that it is "planning" like that which fostered the Growth Management Act.

While the Act very clearly requires urban services for urban densities, it leaves to the local communities and the Growth Management Hearings Boards to determine what is "urban" and what is "rural". In fact, the Comprehensive Plan does accomplish this definition. Community sewer and water services are required for development of lots less than one acre in size, clearly an urban density. Community water service is required for lots sized from 1 acre to 2.5 acres, arguably urban in nature. The Comprehensive Plan, by not requiring utility services on lots larger than 2.5 acres, by default, defines those lots as "rural". This Board finds, given circumstances unique to Ferry County, and in acceptance of the local decision making process, that 2.5 acre lots constitute rural development in Ferry County. Conversely, we also find that lots under 2.5 acres are urban development in Ferry County, and can not be allowed outside a designated urban growth area.

Urban development imposes, as Respondent recognizes, a "list of requirements". If the community cannot supply those requirements, then urban growth must occur elsewhere, where services can be provided.

Thus, this Board finds the Comprehensive Plan does permit urban densities outside of designated urban growth areas, and Comprehensive Plan Sections 7.8.2 and 9.4 are not in compliance with the Growth Management Act. Urban densities must occur only within designated urban growth areas.

Conclusion 3. The comprehensive plan fails to meet the requirements of RCW 36.70A.020(1) and (2) by allowing urban densities outside urban growth areas.

Issue 4: Did the county fail to comply with requirements for early and continuous public participation when it adopted the Ferry County Comprehensive Plan, as required by RCW 36.70A.140?

Petitioners argue that Ferry County failed to comply with the spirit of the public participation

process. The petitioners state that the County held meetings, but failed to comply with the spirit of RCW 36.70A.140 that is expressed in the phrase "consideration of and response to public comments." They also recognize that the County did accept comments from agencies and individuals.

The county responds in their brief by saying that the Planning Commission, Growth Management Advisory Board (GMAB), Curlew Lake Sub-Area Planning Committee (CLSPC) and the Flood Control Account Assistance Program Committee (FCAAP) memberships were completely open to all volunteers. The record shows that the public was involved throughout the planning process by participation in public meetings and submission of written comments. The record also shows that the hearings were recorded and a summary of comments was prepared prior to adoption of the comprehensive plan.

Petitioners have not contended a lack of public participation. In fact, the record shows petitioners have been involved throughout the development of the comprehensive plan, both orally and with written comments. Their contention is that the comments made by agencies and some individuals were not included in the final document.

The GMA requires public participation and consideration by decision makers of the views presented by citizens. Petitioners have not proven that their views were not considered, only that in many instances, they were not included in the comprehensive plan. Such is the nature of our political process.

Conclusion 4. The Board finds that Ferry County has met the requirements of RCW 26.70A.140, regarding public participation in the planning process.

Issue 5: Do Section 7.4.9, 7.4.10, 7.7.4, 7.7.5, and 7.7.6 and Policy L-10 of the comprehensive plan fail to comply with the GMA requirements to designate, inventory and conserve agricultural, forest and mineral resource lands (RCW 36.70A.060(1) and (3), RCW 36.70A.170, and RCW 36.70A.020(8))?

In reviewing this issue, the Board considered the exhibits, briefs and oral arguments in the context of a county with very limited resources and staff. While it is clear that the required product is not complete, we recognize that Ferry County is making solid progress in the proper direction toward completion of the subject lands designation, inventory and conservation. We see evidence that Ferry County will produce a land-use map which will make more visible the policies and designations at issue. Respondent has acknowledged that more work needs to be done, particularly on resolving conflicts between residential and resource extraction uses.

The Board's analysis of the issues will be divided to consider agricultural, forest and mineral

lands separately.

Petitioners contend that agricultural lands have not been adequately designated. Without a land-use map, the "designations" provided in the comprehensive plan sections 7.4.9 and 7.7.4 do not meet the standard of being useful to decision makers on a particular property. This Board views the comprehensive plan designations the same as in Issue #3, more as definitions than designations. The county must complete the process of designation by completing the land-use map.

Petitioners argue that while agricultural lands are given adequate protections, other adjacent uses are not adequately protected from the harmful impacts of agricultural activity. However, this Board finds that the cited sections of the Growth Management Act are to conserve agricultural land, not to protect adjacent lands from agricultural activity.

We find that the required notice on property titles of lands adjacent to agricultural, forest or mineral activity meets the requirements of the GMA with respect to buffering.

We find the Comprehensive Plan is inconsistent and unclear with respect to intentions for designation of forest lands of long-term commercial significance. On page 7-15 of the Comprehensive Plan, forest lands of long-term commercial significance are identified as "those lands outside of designated urban growth areas as Private Forest Lands Grades 2 through 6". Following that, a classification system used under current-use taxation programs is listed. It is unclear how this classification system relates to the previously stated designation. The record notes certain lands owned by Boise Cascade that have not been designated which meet the established criteria, leading further to the unclarity of intentions.

Further, Respondent referenced four documents in Ex. A-20 in defense of exclusion of small timbered parcels and grade 6 timber lands from the forest lands classification. We find nothing in those documents which explain why grade 6 timberlands were excluded.

Petitioners argue that mineral lands are protected to the detriment of other uses. This Board cannot accept the argument that the GMA requirement to protect natural resource lands, specifically mineral lands, has any relevance to protecting the retirement economy in Ferry County as Petitioners argue. The argument seems to contend over-protection. We cannot agree that the cited sections of the comprehensive plan are not in compliance with the GMA requirement to conserve natural resource lands, specifically mineral lands.

The Board is not making a judgment as to whether Grade 6 forest lands should be designated. The County must complete its forest land designation and as part of this process must demonstrate whether Grade 6 forest lands should or should not be designated.

Conclusion No. 5. Agricultural, forest and mineral lands have not been adequately designated. A land-use map may rectify this deficiency. Petitioners did not submit evidence that demonstrated lack of conservation and protection of agricultural, forest or mineral lands.

Issue 6: Do chapter 11 and 12 and policies 6.2.5 and 6.2.6 of the comprehensive plan fail to comply with the GMA requirement to identify lands useful for public purposes, such as utility corridors, transportation corridors, landfills, sewage treatment facilities, storm water management facilities, recreation and schools as required by RCW36.70A.150?

Petitioners have failed to provide by a preponderance of the evidence that Ferry County has not met the requirements of the Growth Management Act on this issue.

While Petitioners correctly point to more work needed in the future, this Board finds that this work falls within the category of implementation, which follows the comprehensive plan.

Conclusion 6. The comprehensive plan is in compliance with the RCW 36.70A.150, identification of lands useful for public purposes.

Issue 7: Does Section 7.7.8 of the comprehensive plan fail to comply with the GMA requirement to identify open space .. useful for recreation, wildlife habitat, trails, and connection of critical areas as required by RCW 36.70A.160?

Petitioners again fail to provide evidence that proper consideration and designation of open space corridors was not accomplished in the comprehensive plan. As critical areas are identified on the future land-use map, the need for wildlife corridors may become more apparent. That need can be addressed by amendments to the comprehensive plan.

Conclusion 7. The comprehensive plan is in compliance with RCW 36.70A.160 with respect to open space requirements.

Issue 8: Did the county fail to comply with the GMA requirement that the comprehensive plan shall be coordinated with, and consistent with, the comprehensive plans of other counties or cities with which the county or city has, in part, common borders or related regional issues, as required by RCW 36.70A.100?

Petitioners rely on an apparent conflict over the size of the urban growth area surrounding the City of Republic as the basis for this issue. While obviously more work needs to be done regarding the Republic urban growth area, we find that Ferry County has met the requirements of RCW 36.70A.100. The substantive issue of the urban grow area surrounding the City of Republic

has not been raised by the City, and has not been adequately addressed by Petitioners.

The record includes correspondence with adjacent counties and the Colville Confederated Tribes and several meetings where intergovernmental issues were discussed. We note that surrounding jurisdictions did not respond to the draft comprehensive plan when circulated.

Conclusion 8. The comprehensive plan has met the procedural requirements of RCW36.70A.100, consistency with neighboring jurisdictions.

Issue 9: Does Policy HE-5 of the comprehensive plan fail to comply with the requirement to use Goal 13 to identify and encourage the preservation of lands, sites and structures that have historical or archeological significance, as required by RCW 36.70A.020(13)?

Petitioners argue that policies HE-5 and AH-13, both of which require any entity claiming the existence of an archeological site to pay for costs associated with any survey of the site, effectively precludes preservation of that site, or, at least, does not encourage preservation, as required by RCW 36.70A.020(13).

Respondent argues that Ferry County does encourage identification and preservation of archeological sites, but simply cannot assume any financial burdens in doing so, and further, no law requires them to do so.

This Board again must recognize the financial limitations of Ferry County. No matter how laudable a goal of county financing for archeological surveys may be, it is an unrealistic expectation given demands on county resources. We do feel that a better wording of the County's policy would reflect only the absence of available County funds for survey purposes as opposed to a policy requiring the entity claiming the site to pay. In fact, Respondents' oral arguments stated their intent was not to preclude other financial support. The policy should reflect that philosophy. However, we conclude that the comprehensive plan meets the requirements of RCW 36.70A.020(13), preservation of historical or archeological sites.

Conclusion 9. The comprehensive plan meets the requirements of RCW 36.70A.020(13).

Issue 10: Does Chapter 8 fail to comply with the GMA requirement of Goal 3 that the comprehensive plan encourage efficient multi modal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans, as required by RCW 36.70A.020(3)?

Petitioners' arguments are based on (1) DCTED (State of Washington Department of Commerce, Trade and Economic Development) comments contained in EX. A-1 and (2) lack of an

"inventory" of existing roads, with a current "level of service" identified for each road and intersection.

With respect to argument (1) above, the Board notes that the comments by DCTED were made in March of 1995, several months before final passage of the comprehensive plan. DCTED's letter of November 20, 1995 makes no mention of any shortcomings in the transportation element. We can thus presume that DCTED's concerns have been met.

We conclude from our reading that the transportation element of the comprehensive plan meets the requirements set out in RCW 36.70A.020(3). Petitioners have failed to provide the required evidence to conclude otherwise.

However RCW 36.70A.070(6) provides a more detailed list of what must be included in a transportation element of a comprehensive plan.

Ferry County recognizes in its comprehensive plan on page 8-5 that more work must be done to complete the transportation element i.e., "Ferry County will develop a County Road Standards Ordinance that will identify levels of service and tie these standards to land use and developed areas within the County". If done properly, this step should complete the transportation element of the comprehensive plan adequately to meet the requirements of RCW 36.70A.070(6).

The Board also acknowledges the nearly impossible task faced by Ferry County in complying with RCW 36.70A.070(6)(c), the finance plan for the transportation element. The combination of large land mass, low population base, limited tax base, and uncertain state and federal revenues to meet transportation needs is daunting when measured against transportation needs in Ferry County. This fact makes it imperative that Ferry County carefully consider transportation impacts when approving development plans.

Conclusion 10. The comprehensive plan meets the requirements of RCW 36.70A.020 (3), transportation planning.

Issue 11: Does the comprehensive plan, by failing to have a future land use map and by failing to impose basic controls on future land use, fail to comply with the GMA requirement that property rights of landowners shall be protected from arbitrary and discriminatory actions, as required by RCW 36.70A.020(6)?

Petitioners have failed to provide the required "burden of proof" to prove non-compliance with RCW 36.70A.020(6). Respondent's brief adequately documents Ferry County's consideration of private property rights.

Petitioners' arguments, however, are worth noting. Private property rights also include the rights of surrounding property owners from unregulated development of nearby property, as argued by Petitioners. While Respondent points to AGO 1992No. 23, that local governments are not required to reach a particular conclusion on how to comply with RCW 36.70A.020(6), Ferry County must be cautious in permitting one owner's rights to supersede another's. While this Board sees no "preponderance of evidence" that Ferry County intends to err on the side of unregulated development, we again recognize that a land use map would help to clarify some uncertainties for decision-makers. Additionally, while a zoning ordinance is not a requirement of the GMA, Ferry County has not adequately shown alternatives to a zoning ordinance which protects land-owners from arbitrary actions.

Respondent's brief again alludes to a forthcoming land-use map. We believe this map is a minimum requirement for citizens of Ferry County to adequately understand and use the comprehensive plan for decision-making purposes. In addition, we direct Ferry County to again consider adoption of a zoning code to protect property owners from unregulated development, and if a zoning code is not adopted, to demonstrate another alternative which will provide adequate protection of all property owners' rights.

Conclusion 11. The comprehensive plan meets the requirements of RCW 36.70A.020 (6), protection of private property rights.

Issue 12: Did the county fail to adopt a land use element designating the proposed general distribution and general location and extent of uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, public utilities, public facilities, and other land uses, the land use element including population densities, building densities, and estimates of future growth and ..public water supplies...all as required by RCW36.70A.070(1)?

As Petitioners' brief notes, this issue has been argued under numerous other headings. To be dealt with here is the issue of population projections.

Petitioners' arguments do not provide the required "burden of proof" that the County's population estimates are flawed, nor that assumptions made regarding population projections have significantly affected the comprehensive plan.

Ferry County is required by (RCW 36.70A.110(2) to plan for growth within a population growth range as determined by the Office of Financial Management. No evidence has been submitted which indicates Ferry County has gone outside that range in developing its comprehensive plan. While both Petitioners and Respondent recognize that the estimated population for 1995 has already been exceeded, we have been provided with no evidence that the twenty-year population

range forecast is flawed. In any event, should OFM revise its forecast, Ferry County can amend its comprehensive plan to reflect any significant changes in population growth patterns.

Conclusion 12. The comprehensive plan meets the requirements of RCW 36.70A.070 (1) with respect to population projections.

Issue 13: Did the county fail to include a rural element including lands that are not designated for urban growth, agriculture, forest or mineral resources, the rural element permitting uses that are compatible with the rural character of such lands and providing for a variety of rural densities, as provided for in RCW 36.70A.070(5), also known as SSB 5567 Section 1(5)?

Petitioners argue in both their brief and oral arguments that the current subdivision ordinance 72-1 fails to reduce sprawl as required by RCW 36.70A.020(2) and does not provide for a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources, as required by RCW 36.70A.070(5). This issue is also partially addressed in Issue #3. As has been noted in our findings on Issue #3, Ferry County must not permit urban densities outside of urban growth areas. Provisions of Ordinance 72-1 which permit divisions resulting in urban densities, and thus requiring urban services, outside of designated urban growth areas, must be revised.

Respondent argues that (1) RCW 36.70A.070 (5) permits a variety of densities in the rural element, and (2) Ordinance 72-1 is in compliance with other state statutes regarding platting.

This Board finds nothing in the GMA which supports an argument for urban densities in rural areas. Clearly, urban densities are not within the permitted varieties of densities envisioned by RCW 36.70A.070(5). Secondly, development regulations must be consistent with the comprehensive plan. Even though Ordinance 72-1 may comply with other applicable state statutes, that fact does not mean it need not comply with the GMA.

Ferry County must develop regulations on subdivision of property which prevent urban densities outside of urban growth areas. This will entail a revision or repeal of sections of Ordinance 72-1 which permit such subdivisions.

Conclusion 13. Ferry County Ordinance 72-1 is not in compliance with RCW 36.70A.070(5). Inasmuch as the comprehensive plan makes no provisions overriding Ordinance 72-1, the comprehensive plan is not in compliance with RCW 36.70A.070(5).

Issue 14: Did the county fail to meet the GMA requirement that the plan be an internally consistent document and all elements (including sub-area plans) shall be consistent with the

future land use map, as required by RCW 36.70A.070 and RCW 36.70A.080?

Petitioners argue in their brief that Chapter 12, the Heritage, Custom and Culture portions of the comprehensive plan, is inconsistent with the plan as a whole. In its oral arguments, Petitioners restate the absence of a land-use map as well as other conflicting land uses, i.e., urban vs. rural, as indications of lack of internal consistency. This Board has addressed the issues of need for a land-use map and various issues of conflicting land uses previously in this decision, and sees no need to further address them here. Further, after reading Chapter 12 of the comprehensive plan, we find nothing in its content that is in conflict with the Growth Management Act.

Therefore, with the exceptions noted in previously addressed issues, the Ferry County comprehensive plan is in compliance with RCW 36.70A.070 and .080 regarding internal consistency.

Conclusion 14. Chapter 12 of the comprehensive plan is not in conflict with RCW 36.70A.070 and 36.70A.080, internal consistency.

Issue 15: In failing to coordinate land use and capital facilities, to establish level of service standards, and to include a 6 year schedule of capital improvements, does the comprehensive plan violate RCW 36.70A.070(3), (4), and (6) for concurrency?

Petitioners' arguments are a re-statement of issues previously addressed in this decision. Respondent has stated that additional work needs to be done, particularly a land-use map. This Board recognizes that capital facilities funding is very difficult and complex. The capital facilities component is the reality test of a comprehensive plan. If capital requirements associated with and necessary for growth and development cannot be met, then growth must be directed elsewhere. Ferry County will need to analyze future development plans with this in mind. The capital facilities component must be developed and updated periodically as the comprehensive plan is finalized.

This Board finds that concurrency requirements of RCW 36.70A.070(3), (4), and (6) have either been met, or will be met as part of work in progress on refinement of the comprehensive plan.

Conclusion 15. The comprehensive plan is in compliance with RCW 36.70A.070 (3), (4), and (6) for concurrency.

Conclusions

Conclusion 1. The comprehensive plan fails to meet the requirements of RCW 36.70A.170(1)(d),

designation of wetlands, fish and wildlife habitat and aquifer recharge areas.

Conclusion 2. Current law, the interim development regulations in Ferry County, is in compliance with RCW 36.70A.060(2). Final development regulations must use the "best available science".

Conclusion 3. The comprehensive plan fails to meet the requirements of RCW 36.70A.020(1) and (2) by allowing urban densities outside urban growth areas.

Conclusion 4. The Board finds that Ferry County has met the requirements of RCW 26.70A.140, regarding public participation in the planning process.

Conclusion 5. Agricultural, forest and mineral lands have not been adequately designated. A land-use map may rectify this deficiency. Petitioners did not submit evidence that demonstrated lack of conservation and protection of agricultural, forest or mineral lands.

Conclusion 6. The comprehensive plan is in compliance with the RCW 36.70A.150, identification of lands useful for public purposes.

Conclusion 7. The comprehensive plan is in compliance with RCW 36.70A.160 with respect to open space requirements.

Conclusion 8. The comprehensive plan has met the procedural requirements of RCW 36.70A.100, consistency with neighboring jurisdictions.

Conclusion 9. The comprehensive plan meets the requirements of RCW 36.70A.020(13).

Conclusion 10. The comprehensive plan meets the requirements of RCW 36.70A.020 (3), transportation planning.

Conclusion 11. The comprehensive plan meets the requirements of RCW 36.70A.020 (6), protection of private property rights.

Conclusion 12. The comprehensive plan meets the requirements of RCW 36.70A.070 (1) with respect to population projections.

Conclusion 13. Ferry County Ordinance 72-1 is not in compliance with RCW 36.70A.070(5). In as much as the comprehensive plan makes no provisions overriding Ordinance 72-1, the comprehensive plan is not in compliance with RCW 36.70A.070(5).

Conclusion 14. Chapter 12 of the Comprehensive Plan is not in conflict with RCW

36.70A.070 and 36.70A.080, internal consistency.

Conclusion 15. The comprehensive plan is in compliance with RCW 36.70A.070 (3), (4), and (6) for concurrency.

FINAL DECISION AND ORDER.

1. The Board finds Ferry County in compliance with the Growth Management Act with respect to Issues 2, 4, 6, 7, 8, 9, 10, 11, 12, 14, and 15.
2. The Board finds Ferry County out of compliance with the Growth Management Act with respect to Issues 1, 3, 5 (designation) and 13.
3. Those issues cited in Conclusions 1, 3, 5 and 13 must be brought into compliance with the Growth Management Act by September 13, 1996.

This is a Final Order under RCW 36.70A.300 for purposes of appeal.

SO ORDERED this 13th day of May, 1996.

EASTERN WASHINGTON

GROWTH MANAGEMENT HEARINGS BOARD

D. E. "Skip" Chilberg, Presiding Officer

Judy Wall, Board Member

Tom Williams, Board Member

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