

**State of Washington**  
**GROWTH MANAGEMENT HEARINGS BOARD**  
**FOR EASTERN WASHINGTON**

<del>GARY D. WOODMANSEE AND</del>	)	
CONCERNED FRIENDS OF	)	
FERRY COUNTY	)	Case No. 97-1-0018
	)	
Petitioners	)	<b>FINAL DECISION</b>
	)	<b>AND ORDER</b>
vs.	)	
	)	
FERRY COUNTY,	)	
	)	
Respondent	)	

**I. Procedural History**

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On August 29, 1997, Gary Woodmansee and Concerned Friends of Ferry County filed a petition for review with the Eastern Washington Growth Management Hearings Board and on September 30, 1997 Petitioners filed an amended petition.

On October 24, 1997 a prehearing conference was held and motions and briefing schedules were established.

On March 19, 1998, the Board received a letter from Gary Woodmansee withdrawing from this case and on March 23, 1998, the Board issued an order granting the withdrawal of Petitioner Woodmansee.

On March 22, 1998 the Board signed an Order on Stipulated Agreement between Ferry County and Petitioners to extend the briefing schedule due the parties spending considerable time in mediation.

Petitioners moved for a change in hearing location, due to a perceived threat to their safety. That motion was granted. On July 8, 1998, the hearing on the merits was held in the Department of

Natural Resources Building in Colville, Washington.

## **II. Findings of Fact**

1. On June 30, 1997 Ferry County adopted amendments to Ferry County Ordinance 95-06 "An Ordinance to Adopt the Ferry County Comprehensive Plan and the Curlew Lake Sub Area Plan".
2. Amendments made to the Ferry County Comprehensive Plan addressed policies for protection of critical areas, specifically wetlands and fish and wildlife habitat.
3. On March 8, 1993, Ferry County adopted its interim Critical Areas Ordinance 93-02 which designated and classified resource lands and critical areas. The final Critical Areas Ordinance has not been completed.

## **III. Legal Issues and Discussion**

**Issue No. 1: Does the Second Amended Ordinance 95-06 (SACP) of June 30, 1997 fail to comply with the Growth Management Act (GMA) requirement that the county shall protect critical areas, including but not limited to wetlands, fish and wildlife habitat (including riparian areas), frequently flooded areas and aquifer recharge areas as required by RCW 36.70A.060(2) and RCW 36.70A.020(9) and (10)?**

**Issue No. 2: Does the Second Amended Ordinance 95-06 (SACP) of June 30, 1997 fail to comply with the Eastern Washington Growth Management Hearings Board requirement that the county shall use best available science as required by RCW 36.70A.172?**

**Petitioners Position:** Petitioners argue "best available science" as required by RCW 36.70A.172 was not used in the development and review of the SACP. Petitioners cite changes made in the SACP which weaken provisions for designation and protection of wetlands contained in the Interim Critical Area Ordinance as well as for other critical areas. Additionally, Petitioners argue the comprehensive plan is the foundation for the Critical Areas Ordinance (CAO), which is currently in draft form. In order for the CAO to provide adequate protection for all critical areas, the policies and goals within the comprehensive plan must be based on "best available science."

**Respondent's Position:** Ferry County argues "best available science" is only one of many considerations which elected officials must consider when making laws. They argue locally-elected officials have the prerogative to balance "best available science" considerations with other goals of GMA, specifically private property rights and economic development goals.

**Discussion:** Petitioners' brief is filled with comparison between the SACP and either interim critical areas ordinance, which is now in effect, or the draft final critical areas ordinance. Likewise, many arguments are directed at issues of protection for critical areas, issues which they acknowledged in the hearing on the

merits are to be addressed in the final critical area ordinance. Even exhibits submitted are of marginal value in addressing the issues presented. For example, to bolster their argument that the SACP does not protect fish and wildlife habitat, they cite a letter dated July 16, 1997 from Kevin Robinette, Department of Fish and Wildlife biologist. This letter is in response to a review of the draft final CAO, not the SACP before us in this petition. However, Petitioners' rebuttal brief focuses solely on the issue of whether the County used best available science in developing the SACP. Petitioners contend the County did not. In *Easy v. Spokane County* (96-1-0016), this board established that Best Available Science must be not only considered, but substantively included in GMA actions taken to comply with the GMA.

"RCW 36.70A.172. Critical areas-Designation and protection-Best available science to be used. (1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries..."

In its brief and exhibits, Ferry County has failed to show evidence of consideration of best available science, let alone substantive inclusion. In fact, at the hearing on the merits, Ferry County acknowledged "this may be a weak spot" in our SACP while acknowledging that best available science is a requirement of the GMA in adoption of its SACP.

All parties to this review recognize that issues of protection for critical areas are left to the final critical areas ordinance, and therefore, will not be addressed in this decision. However, the SACP must provide a foundation for protection which shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries. We will not address specific areas in the SACP which might be deficient in providing a foundation for protection to be afforded later. We will limit our decision to the central issues in this petition: "Did Ferry County include best available science in adoption of its SACP in accordance with RCW 36.70A.172 and prior Board decisions".

Based on the record before us, including testimony by Ferry County, Ferry County's actions are clearly erroneous in their failure to use best available science in adopting the SACP.

Conclusion: Ferry County Second Amended Comprehensive Plan is not in compliance with the Growth Management Act.

**Issue No. 3: Does the Second Amended Ordinance 95-06 (SACP) of June 30, 1997 fail to comply with the Growth Management Act (GMA) requirement to inventory and conserve agricultural, forest and resource lands areas and to insure consistency as required by RCW 36.70A.060(1) and (3), RCW 36.70A.030, and RCW 36.70A.020(8)?**

Petitioners Position: At the hearing on the merits, Petitioners conceded this issue.

Conclusion: This decision will not address this issue.

**Issue No. 4: Does the Second Amended Ordinance 95-06 (SACP) of June 30, 1997 fail to comply with the Eastern Washington Growth Management Hearings Board requirement that the county shall consider the goals and policies of a shoreline master program as required by RCW 36.70A.480 (1) and RCW 90.58.020?**

Petitioners Position: Petitioners argue the shorelines master program must be specifically referred to in the comprehensive plan in order to ensure an internally consistent document.

Respondent's Position: Respondent argues that shoreline master programs are "automatically considered part and parcel of a comprehensive plan".

Discussion: RCW 36.70A.480(1) states: "For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW 90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations." Petitioners arguments fail to show how the SACP might be inconsistent with the County's Shoreline Master Program.

Conclusion: The Board finds the Growth Management Act specifically incorporates the shorelines master program as part of the comprehensive plan. Adequacy of the Shoreline Master Program is not an issue in this petition. Therefore, we find in favor of Ferry County on this issue.

**Issue No. 5: Does the Second Amended Ordinance 95-06 (SACP) of June 30, 1997 fail to comply with the GMA requirement to be internally consistent document and all elements shall be consistent with the future land use map as required by RCW 36.70A.080?**

Petitioners Position: At the hearing on the merits, Petitioners conceded this issue.

Conclusion: This decision will not address this issue.

**IV. ORDER.**

1. Ferry County is ordered to bring its comprehensive plan into compliance with the Growth Management Act, specifically RCW 36.70A.172, within 120 days from the date of this order.
2. A telephonic hearing will be held on September 9, 1998 at 9:00 a.m. to consider arguments on Petitioners' request for invalidity of the SACP. Petitioner's brief is due August 13, 1998; Respondent's brief is due August 27, 1998, and Petitioner's reply brief is due September 3, 1998.

Pursuant to RCW 36.70A.300, this is a final order for purposes of appeal.

Pursuant to WAC 242-02-832, a motion for reconsideration may be filed within ten days of service of this final decision and order.

**SO ORDERED** this 31st day of July, 1998.

**EASTERN WASHINGTON  
GROWTH MANAGEMENT HEARINGS BOARD**

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D. E. "Skip" Chilberg , Presiding Officer

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Judy Wall, Board Member

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Dennis A. Dellwo, Board Member