

State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

CONCERNED FRIENDS OF FERRY COUNTY
and DAVID L. ROBINSON

Petitioner,

v.

FERRY COUNTY,

Respondent.

Case No. 01-1-0019

**FINAL DECISION AND
ORDER**

I. PROCEDURAL HISTORY

On December 21, 2001, CONCERNED FRIENDS OF FERRY COUNTY and DAVID L. ROBINSON, by and through David L. Robinson, filed a Petition for Review.

On February 13, 2002, Respondent, Ferry County filed its Motion to Dismiss.

On February 26, 2002, Petitioners file a Motion to Supplement the Record.

On March 28, 2002, the Board held a telephonic Motions Hearing. Present were Skip Chilberg, Presiding Officer, Dennis Dellwo and Judy Wall, Board Members. David Robinson was present for Petitioners. Stephen Graham was present for Respondent.

On April 5, 2002, an Order On Motions was entered allowing the Petitioner to add to the Record and denying the County's motion to dismiss.

On April 11, 2002, the Board received from Ferry County Prosecuting Attorney, Stephen Graham a letter objecting to the Board's previously issued Motions Order. The Motions Order was modified to correct the inadvertent errors.

On May 9, 2002, a final Hearing on the Merits was held in Republic, Washington. Present were Presiding Officer, D. E. "Skip" Chilberg, and Board Members Dennis A. Dellwo and Judy Wall. Present for Petitioners were David Robinson. Present for Respondent was Stephen Graham, Deputy Prosecuting Attorney.

II. PETITIONERS' MOTION TO SUPPLEMENT THE RECORD

Petitioners moved to Supplement the Record with a letter from the Department of Ecology dated March 19, 2002, addressing Ferry County's proposed Shoreline Master

Program (SMP) amendment. Petitioners argued that the letter would be of assistance to the Board. Petitioners had referenced the letter in their briefing.

Ferry County argued against inclusion of the letter, and further argued that all references to the letter in Petitioners' briefs should be struck, as the material was not before the County when the actions under review were being considered.

After considering arguments on the motion, the Board denied Petitioners' Motion to Supplement the Record, and also struck all references to the letter from Petitioners' Briefs. The item was clearly not part of the record before the Board of County Commissioners when the subject action was taken.

III. FINDINGS OF FACT

1. On March 8, 1993, Ferry County (County) adopted its interim critical area regulations.
2. On September 18, 1995, Ferry County adopted its Comprehensive Plan (CP).
3. On October 22, 2001, Ferry County adopted Development Regulations Ordinance No. 2001-09.
4. As a part of Ordinance No. 2001-09 the Interim Critical Area Regulations was incorporated therein.
5. The Riparian Areas Protection Attachment referred to within Ordinance No. 2001-09 does not at this time exist.
6. The record before the Board does not reflect that the County has included the best available science while developing the protections of Critical Areas.

IV. Standard of Review

The Ferry County Comprehensive Plan and Development Regulations are presumed valid. The burden of proof is on the Petitioners to demonstrate that the plan or regulations are not in compliance with the Growth Management Act (GMA). RCW 36.70A.320 and *Grant County Association of Realtors v. Grant County Case Eastern Washington Growth Management Hearings Board (EWGMHB) Case No.: 99-1-0018 Final Decision and Order p. 6 of 10 (May 23, 2000)*.

The Washington Supreme Court has set out the standards the Growth Board is to

apply to the Ferry County Comprehensive Plan and Regulations:

The Board is charged with adjudicating GMA compliance, and, when necessary, with invalidating noncompliant comprehensive plans and development regulations. [RCW 36.70A.280](#), .302. The Board “shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” [RCW 36.70A.320\(3\)](#). To find an action “clearly erroneous,” the Board must be “left with the firm and definite conviction that a mistake has been committed.” *Dep’t of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 142 Wn.2d 543, 552, 14 P.3d 133, 138 (2000).

V. LEGAL ISSUES

Issue 1: Did Ferry County fail to comply with RCW 36.70A.040, -.060, -.120, and -.172 and interfere substantially with GMA goals (RCW 36.70A.020) by relying, without adequate reason, on a pre-GMA Shorelines Master Program (SMP) to protect shorelines and their associated onshore and offshore habitat?

Petitioners’ position:

Petitioners argue that, by re-adopting the County’s pre-GMA SMP, the County has not complied with GMA requirements to protect shorelines and their associated on-shore and off shore habitat. Petitioners argue the record has no evidence of “best available science” in establishing buffers, or that the County had consulted State agencies before relying on the existing SMP regulations when adopting Ordinance No. 2001-09. Further, Petitioners argue that the buffers established in the County’s SMP have been deemed inadequate by both the Washington State Department of Ecology and Fish and Wildlife. (Petitioners’ Reply Brief, p. 3).

Petitioners contend the County’s SMP requires a 25 foot buffer zone between development and shorelines. Petitioners state in their reply brief: “Such a minimal buffer has been rejected as inadequate by the best available science (BAS) presented to the County since 1993 by DOE and the Department of Fish and Wildlife (DFW).” An example of the comment from WDFW used in *Concerned Friends of Ferry County and David L. Robinson v. Ferry County*, EWGMHB No. 99-1-0004 Exhibit A-28-9:

A **setback of 50 feet** from all DNR Type 1, 2, and 3 waters for houses, garages, and shops is **likely to negatively impact rivers and streams** and lead to loss

of fish and wildlife resources. Overwhelming scientific evidence supports a **buffer minimum** of 100 feet to protect water quality of riparian areas from adjacent developments. (EX: A-28-9, EWGMHB Case No. 95-1-0010, letter from WDFW by Stephen Penland, April 27, 1995). (Emphasis added). Based on an exhaustive review of the scientific literature, WDFW recommended the following buffer widths for typed streams:

Type 1 and 2:	250 feet
Type 3 (5-20 ft. wide):	200 feet
Type 3 (less than 5 ft. wide):	150 feet
Type 4 and 5 (low mass wasting potential):	150 feet
Type 4 and 5 (high mass wasting potential):	225 feet

Respondent's position:

Ferry County argues (1) Petitioners failed to cite which statutes had been violated, and (2) the County's SMP was not subject to Board review since it had been passed prior to the enactment of GMA.

The County argues the Board ruled in Case No. 97-1-0018 "the GMA specifically incorporates the SMP as part of the comprehensive plan. Adequacy of the SMP is not an issue in this Petition. Therefore, we find in favor of Ferry County in this issue." The County did not address the substance of Petitioners arguments.

Discussion:

In Case No. 97-1-0018, the Board did not review the County's pre-GMA Shorelines Master Program (SMP). The Comprehensive Plan is a policy document, to be implemented by development regulations. The County's actions under review here are the development regulations, Ordinance No. 2001-09. That Ordinance incorporates the pre-GMA SMP. The County's Ordinance now brings their SMP before the Board for review because the SMP is the method adopted by the County to implement that portion of the CP. The Board will review the County's SMP to determine whether the provisions therein adequately implement the Comprehensive Plan and protect or regulate as therein provided. The Board does not review the SMP itself as to its validity, but rather its use to comply with the GMA.

Respondent argues the Petitioner fails to cite specific statutes that have been violated, yet the issue statement itself lists those statutes. Petitioners specifically argue that

buffers established in the SMP are not based on “best available science” (RCW 36.70A.172) and fail to protect critical areas. RCW 36.70A.060.

Respondent does not respond to Petitioners’ substantive argument that the County’s SMP does not adequately protect critical areas. At the Hearing on the Merits, the County stated it is in the process of revising its SMP.

Presumably, the County offered no argument defending buffers in the existing SMP because they plan to adopt a new SMP, including best available science. However, we must rule on the adequacy of the existing protections using the SMP. It is clear the existing SMP does not adequately protect shorelines and their associated on-shore and offshore habitat as required by RCW 36.70A.172 and RCW 36.70A.060.

Conclusion:

The Board finds the Petitioners have met their burden of proof and the Board finds the actions of the County are clearly erroneous. Ferry County is not in compliance with RCW 36.70A.172 and RCW 36.70A.060.

Issue 2: Did the County fail to comply with RCW 36.70A.040, -.060, -.120, and -.172 and interfere substantially with GMA goals (RCW 36.70A.020) by not establishing vegetative buffers or other adequate means for protecting riparian areas because it adopts by reference the Ferry County Riparian Area Protection attachment?

Petitioners’ position:

Petitioners argue Ordinance 2001-09 Sec 2.00 relies on a non-existent “Riparian Areas Protection” amendment for protection of riparian areas. They argue the County plans to adopt such an amendment in the future, but those plans do not make Ordinance 2001-09 compliant with GMA requirements.

Respondent’s position:

Respondent argues the subject of this issue is on appeal in Thurston County Superior Court, and thus the Board should not review this matter until that case is decided.

In subsequent briefing to the Board in response to a question at the Hearing on the Merits, Ferry County acknowledged the record of hearings held no language explicitly staying the issue.

Discussion:

Thurston County Superior Court is reviewing this Board's decision, which addressed the adequacy of the Ferry County Comprehensive Plan as amended. The subject of this issue, while addressing the same subject as is under appeal in Thurston County, is adequacy of the development regulations implementing the amended Comprehensive Plan. It is not the same issue. These issues are properly before this Board.

The Record shows that the County, in Ordinance 2001-09, provided for the protection of riparian areas with the "Riparian Areas Protection Attachment". This attachment does not at this time exist. The County's plan to adopt such amendment in the future is not adequate at this time. The riparian areas are not protected.

Conclusion:

Ordinance 2001-09 is non-compliant with regard to protection of riparian areas as required by RCW 36.70A.060, and RCW 36.70A.172. The actions of the County are clearly erroneous.

Issues 3 and 6: Do the Ferry County Development Regulations violate RCW 36.70A.040 (which requires that development regulations be consistent with and implement the comprehensive plan) because it adopts by reference Sections 4, 7.00 and 12 of the Ferry County Interim Ordinance Number 93-02 "Designate and Classify Resource Lands and Critical Areas"?

Petitioners' position:

Petitioners argue (1) Ferry County has not conducted a review of the development regulations for consistency with the Comprehensive Plan as required by RCW 36.70A.040, and (2) the development regulations fail to adequately implement the Comprehensive Plan. They contend the record provides no evidence that a review for consistency was conducted.

Petitioners further argue the development regulations do not sufficiently address several specific policies in the comprehensive plan.

They contend in re-adopting the Interim Critical areas ordinance the County must ensure the regulations utilize best available science. They contend nothing in the record reflects any scientific review was done, nor consultation or coordination with appropriate agencies.

Petitioners also argue ICAO Section 12.01, "variances" adds to the lack of

protection for critical areas. Section 12.01 "variances" states the following:

"Variances may be allowed in order to alleviate any hardship inherent in a piece of property resulting from literal enforcement of the provisions of this ordinance..." and subsection B): "That literal interpretation of the provisions of the ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same designated area under the terms of this ordinance, and prevent an otherwise reasonable use of the property;"

Petitioners contend this section allows far too much room for administrative action without adequate safeguards to protect critical areas.

Respondent's position:

Ferry County argues RCW 36.70A.060 does not require a review for consistency at all stages of the enactment process. They argue a review for consistency was done when the comprehensive plan was enacted, ensuring consistency between the comprehensive plan and interim development regulations.

Further, the County cites sections of the interim critical areas ordinance, re-adopted in Ordinance 2001-09. They contend it implements the comprehensive plan, contrary to Petitioners allegations. Respondent also cites the Critical Aquifer Resource Area ("CARA") ordinance, adopted by Ferry County on April 22, 2002, as implementing Comprehensive Plan goals 18 and 21.

Respondent argues the "variance" clause is "required in any such ordinance to assure that no unfair deprivation of uses to property occurs. This is required to uphold an ordinance as constitutional".

Discussion:

The Respondent does not argue that a review for consistency of the development regulations with the comprehensive plan was done at this stage. Instead, they argue such a review is not required by the law. The Board disagrees. Any review done prior to enactment of the comprehensive plan would be irrelevant to development regulations passed to implement the new comprehensive plan. This review for consistency must be done, and reflected in the record. However, the County will be required to make changes to these regulations. A review at this time would not be appropriate. After the Comprehensive Plan is found in compliance and new regulations

are adopted, it is expected that the County will review the regulations and the Plan for consistency.

Regarding the adequacy of the development regulations to implement the listed goals of the comprehensive plan, the Board has a major concern: the development regulations must utilize best available science in protecting critical areas. Nothing in the record indicates best available science was included in these regulations. In fact, what evidence exists suggests that best available science has been rejected. RCW 36.70A.172 is specific. Best available science must be utilized in protecting critical areas. Ordinance 2001-09 is flawed by not "including the best available science in developing policies and development regulations to protect the functions and values of critical areas". (RCW 36.70A.172). We need not address each specific goal challenged by the Petitioners.

The Respondent argues the newly adopted "CARA" ordinance addresses the needs of Comprehensive Plan goals 18 and 21. As the "CARA" ordinance is not part of the record in this case and was adopted after Ordinance 2001-09, it cannot be considered at this point as compliance. We will review that ordinance at such time it might be submitted to demonstrate compliance with the GMA.

With regard to the "variance clause", the Board recognizes the necessity for administrative discretion. However, that discretion cannot be so broad as to greatly weaken the regulations required under the Growth Management Act. Any discretion allowed in administrative action must be within well-defined standards. Such standards are not evident here. The "variance clause", Section 12 of the ICAO, reenacted here, is non-compliant with the GMA.

Conclusion:

Ordinance 2001-09 is non-compliant because (1) Best available science was not utilized in accordance with RCW 36.70A.172 and (2) Section 12 of the ICAO, incorporated in 2001-09, provides for variances to the development regulations without adequate standards to protect critical areas.

Issue 4: Did the County fail to comply with RCW 36.70A.040, -.060, -.120, and -.172 and interfere substantially with GMA goals (RCW 36.70A.020) by not adopting implementing regulations pertinent to critical aquifer recharge areas, geologically hazardous areas, and frequently flooded areas?

Petitioners' position:

Petitioners contend the County has simply not adopted regulations pertinent to aquifer recharge areas, geologically hazardous areas, and frequently flooded areas.

Respondent's position:

The County points to its "CARA" ordinance, enacted April 22, 2002, as meeting the requirement for protecting aquifer recharge areas, and ICAO Section 10 for protecting geologically hazardous areas.

Discussion:

The "CARA" ordinance is not in the record, nor was it offered. While it may adequately address the issue cited, it is more appropriate to review it during the compliance process.

Petitioners provide no supportive argument that Ordinance 2001-09 fails to protect Geologically Hazardous areas. We must therefore presume the validity of the County's action.

The Board notes Section 4.00 of Ordinance 2001-09 addresses frequently flooded areas. Petitioners have offered no argument regarding the adequacy of that section. We must presume the validity of the County's action.

Conclusion:

Ordinance 2001-09 fails to protect aquifer recharge areas as required by RCW 36.70A.060 and RCW 36.70A.172 and is therefore out of compliance. The County may present its "CARA" ordinance for review during the compliance process.

Issue 5: Did the County fail to comply with RCW 36.70A.060 by not requiring notice on plats and permits issued for development activity within 500 feet of designated resource lands that commercial activities may occur on such lands that are not compatible with residential development for certain periods of limited duration?

Petitioners' position:

Petitioners argue the development regulations do not contain the notices mandated by RCW 36.70A.060(1). The Petitioners contend the omission of the required language, with the substitution of vague language or contradictory language, is a violation of the GMA, and is clearly erroneous.

Respondent's position:

Ferry County argues this issue was decided by the Board in Case No. 00-1-0001, and need not be addressed here. In response to a question from the Board at the Hearing on the Merits, in a subsequent briefing to the Board, Ferry County identified three instances in the ICAO and one instance in the Comprehensive Plan where the “300 foot limit” is specifically mentioned.

Discussion:

RCW 36.70A.060(1), in pertinent part, reads:

Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain period of limited duration.

While it is true the Board did not find non-compliance for failure to require notice on plats and permits issued for development activity within 500 feet of designated resource lands, we noted in that decision that RCW 36.70A.060(1) would still be a requirement of the law. The language provided in Ordinance 2001-09 is non-specific, while the language in the ICAO, as noted by the County, is in specific contradiction to the statutory 500 feet. This contradiction must be corrected to conform to the statute. The distance is 500 feet as required by the above statutory language.

Conclusion:

Ordinance 2001-09 fails to require notice in accordance with the specific requirements of RCW 36.70A.060(1) and is therefore non-compliant.

Issue 7: Did the County fail to comply with RCW 36.70A.040, -.060, and -.120, and interfere substantially with GMA goals (RCW 36.70A.020) by not adopting implementing regulations to restrict subdivision and density of development adequate to conserve designated agricultural lands of long-term commercial significance?

Petitioners’ position:

Petitioners argue that by not prohibiting the division of designated agricultural lands into 2 ½ acre lots, Ferry County Ordinance 2001-09 fails to protect designated agricultural lands as required by RCW 36.70A.040. Petitioners ask for invalidation of the development regulations in so far as they fail to protect agricultural lands. Petitioners

note “The Washington Supreme Court has held that the Act creates an ‘affirmative duty’ on local governments to designate and conserve agricultural lands to assure the maintenance and enhancement of the agricultural resource industry. King County v. Central Puget Sound Growth Management Hearings Board, 142 Wn. 2d 543, 554 (2000) and Redmond v. Central Puget Sound Growth Management Hearings Board, 136 Wash. 2d 38 (1998).”

In further arguing the danger small lot sizes pose to agricultural lands, Petitioners cite this Board’s Final Decision and Order in Save Our Butte v. Chelan County, EWGMHB No. 94-1-0015 (August 8, 1994). The Board in that case considered the work of regional planning and policy expert Arthur C. Nelson in his report entitled, *Economic Critique of U.S. Prime Farmland Preservation Policies*, *Journal of Rural Studies*, Vol. 6, No. 2, 1990. Dr. Nelson, in describing such small-minimum lot zoning, stated: “The effect of such zoning ... is to remove farmland from production and allow non-farm development adjacent to viable farming operations everywhere.” Chelan at p.9. Explaining further, the report states: “Allowing small acre development in agricultural resource lands fails to conserve these lands in two ways. First, the land used for the development is taken out of production, and second, the effects of non-compatible uses on existing farms weaken them.” *Id.*

Petitioners argue that 2 ½ acre lots are too small to farm effectively, will take farmland out of production, and will adversely affect nearby farms.

Respondent’s position:

Ferry County contends the issue was resolved in earlier appeals, and to impose a larger minimum lot size requirement on agricultural lands would be contrary to the comprehensive plan. In oral arguments, they contended that tax incentives inherent with designation of agricultural lands for tax purposes were sufficient protection to preserve the land for agricultural use to comply with the GMA.

Discussion:

The Respondent does not contend that 2 ½ acre lots will protect agricultural lands, or in any way preserve these lands for agricultural use. Rather, they argue that tax incentives alone will keep these lands available for agricultural productions. The Board rejects that argument. Ferry County has an “affirmative duty” to protect

designated agricultural lands. Allowing those lands to be divided into 2 ½ acre lots simply does not protect those lands for agricultural use. The tax incentives alone are insufficient to protect agricultural lands.

The 2.5-acre minimum lot size as applied to agricultural resource lands in Ferry County, fails to comply with the affirmative duty to conserve and protect agricultural resource lands to assure the maintenance of the agricultural industry.

Conclusion:

Ferry County Ordinance 2001-09 has failed to protect agricultural lands as required by RCW 36.70A.040. The actions of the County are clearly erroneous.

Issue 8: Did the County fail to comply with RCW 36.70A.040 and -.120 and interfere substantially with GMA goals (RCW 36.70A.020) by not adopting implementing regulations to identify and encourage the preservation of lands, sites, and structures that have historical or archeological significance?

Petitioners' position:

Petitioners contends "the Ferry County Comprehensive Plan requires the establishment of 'a local County Ordinance' to ensure the preservation of archaeological and historic sites." Ferry County Comprehensive Plan p.12-4. Ferry County must adopt development regulations that carryout the GMA goal and the comprehensive plan provisions. RCW 36.70A.040(4)(d)."

Further, they argue: "Development regulations must comply with the GMA's goals, including RCW 36.70A.020(13). RCW 36.70A.020. Further, RCW 36.70A.120 requires that county activities, including approving, conditioning, and denying development permits must be consistent with the Ferry County Comprehensive Plan. To ensure that the comprehensive plan historical and archaeological policy is effectively implemented, regulations should be adopted. Ferry County's adopted Development Regulations do not contain the historic and archaeological regulations. Since the county has not done this, it has violated the GMA"

Petitioners also request invalidation of Ordinance 2001-09 in-so-far-as they affect such sites.

Respondent's position:

Ferry County offers "this ordinance does not offer itself as a historical and archeological sites ordinance. If Mr. Robinson wishes to discuss that subject he should

bring a failure to act challenge.”

Discussion:

The Board finds that the issue is timely, and in effect, a failure to act challenge. RCW 36.70A.020(13) provides counties must: “Identify and encourage the preservation of lands, sites, and structures, that have historical and archaeological significance.” RCW 36.70A.040(4)(d) requires development regulations to implement the above stated GMA goal. Ordinance 2001-09, having failed to address historic and archeological issues, is non-compliant.

Conclusion:

By failing to address the identification and preservation of historical and archeological sites, Ordinance 2001-09 is not in compliance with RCW 36.70A.020(13) and 36.70A.040(4)(d).

Issue 9: Did the County fail to comply with RCW 36.70A.040, -.070, and -.120 and interfere substantially with GMA goals (RCW 36.70A.020) by not adopting implementing regulations to adequately restrict the uses allowed in its designated rural areas of more intensive development?

Petitioners’ position:

Petitioners argue the County has failed to provide regulations governing more intense development in rural areas (RAIDs). They cite the lack of regulations for ensuring preservation of the rural character, as required by RCW 36.70A.070 (5)(c). The Petitioners contend that these developments (RAIDS) are to serve only the existing and protected rural population, as required by RCW 36.70A.070(5)(d) and non-residential uses will remain isolated, as required by RCW 36.70A.070(5)(d)(iii).

Respondent’s position:

Ferry County argues the cited statutes apply only to comprehensive plans, not development regulations. Ferry County makes no argument that Ordinance 2001-09 regulates land use in RAIDs.

Discussion:

The Board rejects the County’s argument that the cited statutes do not apply to development regulations.

Development regulations must implement the comprehensive plan. The Ferry County Comprehensive Plan (FCCP) clearly provides for rural areas of more intense

development, as authorized, and limited, by the cited statutes. While the CP authorizes such land uses, limiting or regulating those uses is properly left to the development regulations. The absence of those regulations in Ordinance 2001-09 is clearly an error. The County has failed to act by not adopting such regulations that would properly implement these policies of the Comprehensive Plan.

Conclusion:

Ordinance 2001-09 fails to adequately restrict uses allowed in designated rural areas of more intense development as required by RCW 36.70A.040, 070, and .120. The County is out of compliance.

Issue 10: Did the County fail to comply with RCW 36.70A.020, -.040, -.070, -.110, and -.120 and interfere substantially with GMA goals (RCW 36.70A.020) by allowing densities of 1 unit per 2.5 acres even in rural areas not designated for more intensive development?

Petitioners' position:

Petitioners here wish the Board to re-address the issue of allowing 2 ½ acre lots in rural areas outside RAIDs. They contend the 2 ½ acre lots are non-compliant with the GMA. Further, even if 2 ½ acre lots are allowed in the comprehensive plan, they should not be allowed in the development regulations. They cite several decisions by all three Growth Management Hearings Boards where 2 ½ acre lots are deemed non-rural, and constitute sprawl.

Respondent's position:

Respondent relies on the Board's earlier ruling allowing 2 ½ acre lots in rural areas.

Discussion:

Other than as minimum lot sizes apply to protection of natural resource lands, the Board has ruled on this issue previously and will not address it further here.

Conclusion:

This Issue is not properly before the Board as it has been previously decided.

Issue 11: Did the County fail to comply with RCW 36.70A.040, -.070, -.120 and

interfere substantially with GMA goals (RCW 3.670A.020) by not adopting implementing regulations to require each public service agency providing services to a given project to verify in writing that either the agency has the capability to provide any increased service needs or the agency has entered into a mitigation agreement with the applicant to ensure that adequate capacity will be available when needed?

Petitioners' position:

Petitioners have withdrawn this issue.

V. INVALIDITY

Petitioners have requested certain provisions of Ordinance 2001-09 be declared invalid. The Board is unable to find absent provisions invalid. In addition, we find no evidence of an immediate threat to the goals of the GMA by the non-compliant sections of Ordinance 2001-09. The request for a finding of invalidity is denied.

VI. ORDER

Based on the record and presentations before the Board, the Board finds the following:

1. Issue 1, protections for shorelines, Ordinance 2001-09 is found non-compliant with RCW 36.70A, RCW 36.70A.060 and RCW 36.70A.172.
2. Issue 2, protection of riparian areas, Ordinance 2001-09 is found non-compliant with RCW 36.70A.060 and RCW 36.70A.172.
3. Issues 3 and 6, Ordinance 2001-09 is non-compliant with RCW 36.70A.172, regarding utilization of best available science, and for providing broad discretion for administrative variances without adequate standards for review.
4. Issue 4, Ordinance 2001-09 is non-compliant with RCW 36.70A.060 and RCW 36.70A.172 for protection of aquifer recharge areas.
5. Issue 5, Ordinance 2001-09 is non-compliant with RCW 36.70A.060 (1), failure to provide required notice.
6. Issue 7, Ordinance 2001-09 is non-compliant with RCW 36.70A.040, for failure to protect agricultural lands of long-term commercial significance.
7. Issue 8, Ferry County is out of compliance with RCW 36.70A.020(13) and RCW 36.70A.040(4)(d) for failure to address identification and preservation of historical and archeological sites.

8. Issue 9, regarding regulation of land use within RAIDs, Ordinance 2001-09 is non-compliant with RCW 36.70A.040, RCW 36.70A.070, and RCW 36.70A.120.

9. Issue 10, Ferry County is not found out of compliance.

10. Petitioners have withdrawn Issue 11.

The Board orders Ferry County to bring Ordinance 2001-09 into compliance with the GMA within 120 days of the date of this order.

This is a final order for purposes of appeal pursuant to RCW 36.70A.300(5). 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 14th day of June 2002.

EASTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD

D.E. "Skip" Chilberg, Board Member

Dennis Dellwo, Board Member

Judy Wall, Board Member