State of Washington
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

CONCERNED FRIENDS OF FERRY COUNTY and DAVID ROBINSON Petitioner, v. FERRY COUNTY, Respondent.	Case No. 01-1-0019 SECOND ORDER ON COMPLIANCE

I. BACKGROUND

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 filed 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 and Stephen Graham was present for Respondent.

On April 5, 2002, an Order On Motions was entered allowing the Petitioners' request for additions to the Record and denying the County's motion to dismiss.

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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.

On June 14, 2002, the Board issued its Final Decision and Order directing Ferry County to come into compliance within 120-days from the date of the Order. Ferry County appealed the Board's Order to Superior Court. September 29, 2003, the Board received the Order of Dismissal of the Superior Court case.

On September 30, 2003, the Board issued its Order Setting Compliance Hearing and Briefing Schedule.

On October 31, 2003, the Board received a Motion for Continuance from Respondent's attorney Steve Graham, asking the Board to move the compliance hearing due to a scheduling conflict.

On November 3, 2003, the Board granted Respondent's request for continuance.

On November 24, 2003, the Board held a telephonic compliance hearing. Present for the Board was Judy Wall and Dennis Dellwo. Present for Petitioners were David Robinson. Present for Respondent was Stephen Graham. D. E. "Skip" Chilberg reviewed the recorded hearing prior to participating in the following order.

On December 16, 2003, the Board issued its First Order on Compliance.

On April 8, 2004, the Board received Petitioner's Memo to the Board with Regards to a 2nd Compliance Hearing and Motion for Sanctions from David L. Robinson.

On June 7, 2004, the Board held the second telephonic compliance hearing. Present were Presiding Officer, D. E. "Skip" Chilberg, and Board Members Dennis A. Dellwo and

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Judy Wall. Present for Petitioners were David Robinson. Present for Respondent was Stephen Graham, Deputy Prosecuting Attorney.

II. STANDARD OF REVIEW

Comprehensive plans and development regulations (and amendments thereto) adopted pursuant to Growth Management Act ("GMA" or "Act") are presumed valid upon adoption by the local government. RCW 36.70A.320. The burden is on the Petitioner to demonstrate that any action taken by the respondent jurisdiction is not in compliance with the Act. RCW 36.70A.320.

The Washington Supreme Court has summarized the standards for Board review of local government actions under Growth Management Act. It was stated:

> 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 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).

The Board will grant deference to counties and cities in how they plan under Growth Management Act. RCW 36.70A.3201. But, as the Court has stated, "local discretion is bounded, however, by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearings Board,* 142 Wn.2d 543, 561, 14 P.2d 133 (2000). It has been further recognized that "[c]onsistent with *King County,* and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not 'consistent with the requirements and

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goals of the GMA." *Thurston County v. Cooper Point Association,* 108 Wn.App. 429, 444, 31 P.3d 28 (2001).

The Board has jurisdiction over the subject matter of the Petition for Review. RCW 36.70A.280(1)(a).

In the Board's First Compliance Order dated December 5, 2003, the Board Ordered the following:

1. Ferry County is in continued non-compliance for their failure to protect shorelines under RCW 36.70A.060 and RCW 36.70A.172.

2. Ferry County is in continued non-compliance for their failure to protect riparian areas under RCW 36.70A.060 and RCW 36.70A.172.

3. Ferry County has been previously ruled in compliance in Case No. 97-1-0018 on the issue regarding protection of aquifer recharge areas RCW 36.70A.060 and RCW 36.70A.172. This issue is resolved.

4. Ferry County is in continued non-compliance for their failure to protect agricultural lands of long-term commercial significance, in violation of RCW 36.70A.040.

5. Ferry County is in continued non-compliance for their failure to address identification and preservation of historical and archeological sites, in violation of RCW 36.70A.020(13) and RCW 36.70A.040(4)(d).

6. Ferry County is in continued non-compliance for their failure to regulate land use within RAID's, in violation of RCW 36.70A.040, RCW 36.70A.070, and RCW 36.70A.120.

7. Ferry County is in continued non-compliance for their failure to provide required notice, in violation of RCW 36.70A.060(1).

8. Ferry County is in continued non-compliance for their failure to utilize Best Available Science, and failure to provide adequate standards for administrative review, in violation of RCW 36.70A.172.

9. Ferry County has 90-days from the date of this order to come into compliance.

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Items No. 2 and No. 5 from the above list address "failure to act". Petitioners acknowledge the County has now enacted legislation to protect riparian areas and historical and archeological sites, and that a ruling of compliance with the Board's Order is appropriate. Petitioners of course have the right to challenge the substantive compliance with a new timely-filed Petition for Review.

For the remaining items No. 1, 4, 6, 7, and 8, Respondent acknowledges no legislative or administrative enactments. They provide argument that progress is being made on some of the items, but acknowledge no action on others.

Petitioners have carried their burden of proof on these remaining items. Either the County has acted or they have not. Petitioners argue the County has not acted; the County offers no evidence or argument otherwise. The Board has no choice but to issue the following:

V. ORDER

1. Ferry County is in continued non-compliance for their failure to protect shorelines under RCW 36.70A.060 and RCW 36.70A.172.

2. Ferry County is in continued non-compliance for their failure to protect agricultural lands of long-term commercial significance, in violation of RCW 36.70A.040.

3. Ferry County is in continued non-compliance for their failure to regulate land use within LAMIRD's, in violation of RCW 36.70A.040, RCW 36.70A.070, and RCW 36.70A.120.

4. Ferry County is in continued non-compliance for their failure to provide required notice, in violation of RCW 36.70A.060(1).

5. Ferry County is in continued non-compliance for their failure to utilize Best Available Science, and failure to provide adequate standards for administrative review, in violation of RCW 36.70A.172.

6. Ferry County is to provide a proposed schedule to the Board by **June 24, 2004**, to achieve compliance on the remaining issues.

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6. Ferry County must take the appropriate legislative action to bring themselves into compliance with this order by **October 12, 2004,** 120 days from the date issued.

7. Request for Sanctions: The Board acknowledges the progress Ferry County is making, and will not at this time recommend sanctions be applied.

Pursuant to RCW 36.70A.300(5), 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 from the date of service of this Order.

SO ORDERED this 14th day of June 2004.

EASTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

_____
D.E. "Skip" Chilberg, Board Member

_____
Judy Wall, Board Member

_____
Dennis Dellwo, Board Member

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