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2 **State of Washington**  
3 **GROWTH MANAGEMENT HEARINGS BOARD**  
4 **FOR EASTERN WASHINGTON**

5 SCOTT SIMMONS,

Case No. 04-1-0011

6 Petitioner,

ORDER ON MOTIONS

7 v.

8 STEVENS COUNTY,

9 Respondent,

10 LARSON BEACH NEIGHBORS and JEANIE  
11 WAGENMAN,

12 Intervenor.

13  
14 **I. PROCEDURAL HISTORY**

15 On September 13, 2004, SCOTT SIMMONS, by and through his representative, Scott  
16 Simmons, filed a Petition for Review.

17 On October 4, 2004, Larson Beach Neighbors and Jeanie Wagenman filed a Motion  
18 to Intervene.

19 On October 8, 2004, the Board received a Notice of Appearance filed by Peter Scott.

20 On October 11, 2004, the Board held a telephonic Prehearing conference. Present  
21 were, John Roskelley, Presiding Officer, and Board Members Judy Wall and Dennis Dellwo.  
22 Present for Petitioner was Scott Simmons. Present for Respondent was Lloyd Nickel and Mr.  
23 Scott.

24 On October 12, 2004, the Board issued its Prehearing Order.

25 On October 18, 2004, the Board received Petitioner's and Respondent's Objection to  
26 Larson Beach Neighbors and Jeanie Wagenman's Motion to Intervene.

1 On October 25, 2004, the Board received Intervenors' Response to Respondent and  
2 Petitioner's Objection to Larson Beach Neighbors and Jeanie Wagenman's Motion to  
3 Intervene.

4 On November 1, 2004, the Board issued its Order on Motion to Intervene.

5 On November 1, 2004, the Board received Petitioner's Motion to Supplement the  
6 Record. Also on November 1, 2004, the Board received Intervenors' Motion to Supplement  
7 Record Clarification of admitted exhibits.

8 On December 7, 2004, the Board held a telephonic Motion Hearing. Present were,  
9 John Roskelley, Presiding Officer, and Board Members Judy Wall and Dennis Dellwo. Present  
10 for Petitioner was Scott Simmons. Present for Respondent was Lloyd Nickel and Mr. Scott.  
11 Present for Intervenors was Jeanie Wagenman.

## 11 II. FINDINGS OF FACT

- 12 1. Stevens County published a notice of adoption of Title 13, Resolution  
13 32-2003, the Stevens County Critical Ordinance, on March 4, 2003.
- 14 2. Stevens County published a notice of adoption of Amendments to Title  
15 13, the Stevens County Critical Areas Ordinance, on July 15, 2004.
- 16 3. The public record used to develop Title 13, the Stevens County Critical  
17 Areas Ordinance, was used extensively to develop the Amendment to  
18 Title 13.
- 19 4. The Stevens County "NOTICE OF PUBLIC PARTICIPATION ON  
20 CRITICAL AREAS ORDINANCE", published June 10, 2004, specifically  
21 states that the Planning Division or the BOCC must receive all  
22 comments no later than 4:30 PM, June 25, 2004.
- 23 5. On June 29, 2004, the Planning Commission continued the public  
24 hearing. The public notice said they "will consider the written record on  
25 the CAO Title 13 Amendment revisions in order to form a  
26 recommendation for the BOCC." The Planning Commission's  
recommendation to the BOCC is based on the written record. The

1 notice further stated that opportunities for the public to speak may be  
2 given.

- 3 6. The notice for the BOCC public hearing on July 6, 2004 also states that  
4 opportunities for the public to speak may be given. Nothing was  
5 mentioned about accepting written exhibits.

### 6 III. BURDEN OF PROOF

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

12 The Board will grant deference to counties and cities in how they plan under Growth  
13 Management Act (GMA). RCW 36.70A.3201. But, as the Court has stated, "local discretion is  
14 bounded, however, by the goals and requirements of the GMA." *King County v. Central*  
15 *Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.2d 133  
16 (2000). It has been further recognized that "[c]onsistent with *King County*, and  
17 notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly  
18 when it foregoes deference to a . . . plan that is not 'consistent with the requirements and  
19 goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn.App. 429, 444, 31  
20 P.3d 28 (2001).

21 Pursuant to RCW 36.70A.320(3) we "shall find compliance unless [we] determine  
22 that the action by [Jefferson County] is clearly erroneous in view of the entire record before  
23 the Board and in light of the goals and requirements of [the GMA]." In order to find the  
24 County's action clearly erroneous, we must be "left with the firm and definite conviction that  
25 a mistake has been made." *Department of Ecology v. Public Utility Dist. 1*, 121 Wn.2d 179,  
26 201, 849 P.2d 646 (1993).

1 The Board has jurisdiction over the subject matter of the Petition for Review. RCW  
2 36.70A.280(1)(a).

#### 3 IV. DISCUSSION

4 The Petitioner, Mr. Scott Simmons, filed a Motion to Supplement the Record,  
5 requesting the following additions be added to the record:

6 (Petitioner's Items are referenced by the designation **A.**, then the number.)

##### 7 **A.**

- 8 1. The Respondent's Index of the Record be expanded to include the full  
9 Index of the record for Title 13.
- 10 2. The index to the record should be expanded to include all electronic  
11 recordings of the Planning Councils, Planning Commission, and BOCC  
12 hearings concerning Title 13.
- 13 3. The index should be expanded to include all handouts and meeting  
14 materials for above referenced meetings.

15 The Intervenors, Larson Beach Neighbors and Jeanie Wagenman, represented by  
16 Jeanie Wagenman, also filed a Motion To Supplement The Record and requested the Board  
17 to allow the following additions:

18 (The Intervenors' Items are referenced by the designation **B.**, then the number.)

##### 19 **B.**

- 20 1. The Record should include all the minutes of the meetings and hearings  
21 regarding Amended Title 13 and be available to the public and  
22 Intervenors.
- 23 2. The Record should include drafts of proposed changes to the Amended  
24 Title 13, printed or submitted at meetings and hearings.
- 25 3. The Record should include a complete finished copy of Title 13 with  
26 Amended Changes.
4. The Record should include specific exhibits of the Record acquired  
during the process of writing Title 13 (as opposed to just the Amended

- 1 13). Ms. Wagenman referenced exhibits (or portions thereof) 32, 59,  
2 115, 128, 129, 140, 141, 142, 149, 167, 169, 177, 181 and 182.
- 3 5. Requested Water Resource Inventory Area (WRIA) 59 be included in  
4 the Record.
- 5 6. Requested two new submissions, which included a letter from Mr.  
6 Walter Davis to Stevens County Planning Department and an e-mail to  
7 Jeanie Wagenman from Brodhaus, with a reply from Jim Davies dated  
8 September 7, 2004.
- 9 7. Requested Exhibits 164, 165 and 166 be removed from the record.  
10 Motion items **A.** 1 through 3 by the Petitioner were discussed during the  
11 teleconference first.

**11 Respondent's response to Petitioner's Item #1:**

12 In response to the Petitioner's Motion #1, the Respondent, represented by Mr. Scott,  
13 argued that Title 13 (the original Critical Areas Ordinance adopted by Stevens County) and  
14 Amended Title 13 should be considered separate actions, thus each should have separate  
15 records. Incorporating the entire record of Title 13 would make the process cumbersome.  
16 This Petition should be based only on the record submitted during the amendment process.  
17 Mr. Scott argued that since Stevens County only intended to address the non-compliant  
18 issues through a separate resolution, only the record accumulated during that process  
19 should be used.

**19 Petitioner and Intervenor's response to Respondent:**

20 The Petitioner and Intervenor's disagreed. They argued that the two actions, Title 13  
21 and the subsequent Amendment to Title 13, are inseparable. The record for the  
22 Amendment was an accumulative process. According to the Petitioner, there's no  
23 requirement to submit all new material every time there's a new amendment. The  
24 Amendment was an extension of the record produced for the adoption of the original Title  
25 13.

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1 The Intervenor expressed concern about having to duplicate the record of an action  
2 every time an amendment is considered. It would be overly burdensome to the Petitioner.

3 **Respondent's response to Petitioner's Items #2 & #3:**

4 The Respondent agreed to items #2 and #3 submitted by the Petitioner, so there  
5 was no further discussion on these items.

6 **Respondent's response to Intervenors' Items #1 & #2:**

7 The Respondent, in reference to items #1 and #2, said the minutes of the meetings  
8 and drafts of Title 13 were available in the Planning Department in various formats and  
9 could be seen or copied there.

9 **Intervenors' response to Respondent's argument:**

10 Intervenors' requested the documents be available where the rest of the record is  
11 located. Copies of all documents, not just a selection offered by the County, should be  
12 available and citizens shouldn't have to search in a variety of venues to inspect the record.

13 **Respondent's response to Intervenors' Item #3:**

14 The Respondent, regarding item #3, agreed to distribute an "engrossed" version of  
15 the Amended Title 13 to all parties.

16 **Respondent's response to Intervenors' Item #4:**

17 The Respondent, regarding item #4, argued that it was too late to introduce new  
18 items and those exhibits requested by the Intervenor should be excluded.

18 **Intervenors' response to Respondent's argument:**

19 The Intervenor argued that exhibits from the Title 13 record should be included in  
20 the record for the Amended version. This is the same issue as Petitioner's #1.

21 **Respondent's response to Intervenors' #5:**

22 Regarding item #5, Respondent pointed out that the document requested, the WRIA  
23 59 study, was already included in the record. Further investigation by Ms. Wagenman  
24 proved this was the case.

1 **Respondent's response to Intervenor's Items #6:**

2 The Respondent argued that item #6 was the introduction of new material to the  
3 record and shouldn't be allowed.

4 **Intervenor's response to Respondent's arguments:**

5 Ms. Wagenman agreed with Mr. Scott that the letter and e-mail in item #6 were  
6 new, but are important additions to the record to supplement the Intervenor's case.

7 **Respondent's response to Intervenor's Item #7:**

8 Item #7, the three written exhibits presented at the July 6, 2004, Board of County  
9 Commissioners meeting, were accepted at a public hearing where public testimony was to  
10 be allowed. Mr. Scott said he didn't see a difference in accepting written testimony from  
11 oral testimony and putting it in the record.

12 **Petitioner's and Intervenor's response to Respondent's arguments:**

13 Mr. Simmons agreed with Mr. Scott. The Board of County Commissioners allowed the  
14 documents in support of his testimony and should be part of the record.

15 Ms. Wagenman disagreed with the Respondent on item #7, arguing that Stevens  
16 County sent out a notice saying the deadline for submitting written material is at 4:30 PM  
17 on June 25, 2004. Written material submitted after that date and time should not be  
18 allowed in the record.

19 **Board discussion:**

20 In regards to Petitioner's Item #1, the Board believes the record should incorporate,  
21 not only the exhibits presented during the Amendment process, but also the exhibits  
22 presented during the initial adoption of Title 13, which is the foundation for the  
23 Amendment. Those who wish to Petition or Intervene should not have to submit duplicative  
24 documents during an amendment process that were already submitted as part of an  
25 extensive record of the original ordinance. Title 13 and the Amendment to Title 13 are  
26 synonymous. The Respondent agreed to Petitioner's Items #2 and #3 without argument  
and they are therefore granted.



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5. Item #7, a request to disallow the inclusion of exhibits #164, #165 and #166, is granted.

**SO ORDERED** this 10<sup>th</sup> day of December 2004.

EASTERN WASHINGTON GROWTH MANAGEMENT  
HEARINGS BOARD

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John Roskelley, Board Member

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Judy Wall, Board Member

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Dennis Dellwo, Board Member