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

CONCERNED FRIENDS OF FERRY COUNTY
and DAVID ROBINSON, RIPARIAN OWNERS
OF FERRY COUNTY and SHARON
SHUMATE,

Petitioner,

v.

FERRY COUNTY,

Respondent.

Case No. 04-1-0007c

SECOND ORDER ON COMPLIANCE

I. PROCEDURAL HISTORY

On May 25, 2004, RIPARIAN OWNERS OF FERRY COUNTY and SHARON SHUMATE,
by and through their representative, Sharon Shumate, filed a Petition for Review.

On July 6, 2004, CONCERNED FRIENDS OF FERRY COUNTY and DAVID ROBINSON,
by and through their representative, David Robinson, filed a Petition for Review.

On August 20, 2004, the Board issued its Prehearing Order and Order on
Consolidation, consolidating the two cases.

1 On November 23, 2004, a Hearing on the Merits was held in Republic, the parties or
2 their representative were there together with the Presiding Officer, Dennis Dellwo and
3 Board Members, Judy Wall and John Roskelley.

4 On December 21, 2004, the Board issued its Final Decision and Order. Ferry County
5 was to take legislative action to bring themselves into compliance by April 19, 2005.

6 On March 10, 2005, the Board received a stipulation signed by Petitioner Dave
7 Robinson and Respondent's attorney Steve Graham requesting an additional 30 days to take
8 legislative action to correct the non-compliance issues raised in the Petition for Review filed
9 by Robinson.

10 On May 19, 2006, the Board received Respondent's Motion to Set Compliance
11 Hearing.

12 On September 22, 2006, the Board issued its Order on Compliance.

13 On October 2, 2006, the Board received Respondent's Motion for Reconsideration.

14 On October 17, 2006, the Board received Respondent's Memorandum in Support of
15 Motion for Reconsideration asking the Board to extend the deadline for Ferry County to
16 "take appropriate legislative action to bring themselves into compliance" from two months
17 to twelve months.

18 On October 27, 2006, the Board received Petitioners' Memorandum Regarding
19 Motion for Reconsideration of September 22, 2006, Order on Compliance and Agreement to
20 Extend Deadline for Compliance by 30 Days.

21 On October 30, 2006, the Board issued its Order on Motion for Reconsideration.

22 On November 20, 2006, the Board issued its Order Setting Compliance Hearing and
23 Briefing Schedule.

24 On April 3, 2008, the Board issued its Order Setting Compliance Hearing and Briefing
25 Schedule.

26 On June 3, 2008, the Board held the compliance hearing. Present were John
Roskelley, Presiding Officer, Board Members Joyce Mulliken and Dennis Dellwo. Present for
Petitioners was David Robinson. Present for Respondent was Steve Graham.

1 **II. STANDARD OF REVIEW**

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

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

10 The Board is charged with adjudicating GMA compliance, and,
11 when necessary, with invalidating noncompliant comprehensive
12 plans and development regulations. RCW 36.70A.280, .302. The
13 Board "shall find compliance unless it determines that the action
14 by the state agency, county or city is clearly erroneous in view of
15 the entire record before the county, or city is clearly erroneous
16 in view of the entire record before the Board and in light of the
17 goals and requirements of [the GMA]." RCW 36.70A.320(3). To
18 find an action "clearly erroneous" the Board must be "left with
19 the firm and definite conviction that a mistake has been
20 committed." *Dep't of Ecology v. Pub. Util. Dist. No. 1*, 121 Wn.2d
21 179, 201, 849 P.2d 646 (1993).

22 The Board will grant deference to counties and cities in how they plan under Growth
23 Management Act. RCW 36.70A.3201. But, as the Court has stated, "local discretion is
24 bounded, however, by the goals and requirements of the GMA." *King County v. Central*
25 *Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.2d 133
26 (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
goals of the GMA." *Thurston County v. Cooper Point Association*, 108 Wn.App. 429, 444, 31
P.3d 28 (2001).

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

3 4 **III. DISCUSSION**

5 The Eastern Washington Growth Management Hearings Board (Board) requested a
6 second compliance hearing for Case No. 04-1-0007c. The parties briefed the remaining
7 issues in this case, which are: (1) Ferry County's failure to designate buffers for Type 1 and
8 2 waters based on BAS; and (2) the County's failure to include reference to BAS in the
9 criteria for granting critical area variances.

10 The Petitioners claim the County is out of compliance for failure to pass legislation to
11 comply with the Board's Final Decision and Order on the two remaining issues in this case.
12 The County contends it has legislation currently in process to amend the Comprehensive
13 Plan, Critical Areas Ordinance and the development regulations ordinance for both issues.
14 Both parties agree the County is still in non-compliance in Case No. 04-1-0007c.

15 16 **VI. ORDER**

17 Based upon the Board's review of the GMA, prior decisions of the Hearings Boards,
18 briefing and presentation by the parties at the compliance hearing, and having discussed
19 and deliberated on the matter, the Board enters a Finding of Non-Compliance and directs
20 the County to bring itself into compliance with the Board's Order and the GMA by
21 **December 8, 2008, 120 days**, from the date of this Order.

22 Respondent's Statement of Actions Take to Comply is due to the parties and Board
23 by **December 22, 2008**. Petitioners' compliance brief is due to the parties and Board by
24 **January 5, 2009**. Respondent's compliance brief is due to the parties and Board by
25 **January 20, 2009**. Petitioners' optional reply brief is due to the parties and Board by
26 **January 26, 2009**. The Compliance Hearing is scheduled for **February 2, 2009, from**

1 10:00 a.m. to 1:00 p.m. The compliance hearing shall be limited to consideration
2 of the Legal Issues found noncompliant and remanded in this Order. The parties
3 will call: 360-407-3780 followed by 488728 and the # sign. Ports are reserved
4 for Mr. Robinson and Mr. Graham. The parties shall file the original and four
5 copies. Board originals, Board Member copies and exhibits must be single sided,
6 two hole, top center punched, clearly tabbed, and accompanied by a table of
7 attached exhibits naming and describing each exhibit.

8 SO ORDERED this 9th day of June 2008.

9 EASTERN WASHINGTON GROWTH MANAGEMENT
10 HEARINGS BOARD

11 _____
12 John Roskelley, Board Member

13 _____
14 Dennis Dellwo, Board Member

15 _____
16 Joyce Mulliken, Board Member