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

LOON LAKE PROPERTY OWNERS  
ASSOCIATION, LOON LAKE DEFENSE  
FUND, WILLIAM SHAWL, and JANICE  
SHAWL, LARSON BEACH NEIGHBORS, and  
JEANIE WAGENMAN

Petitioner,

DEPARTMENT OF ECOLOGY,

Intervenor,

v.

STEVENS COUNTY,

Respondent.

**Case No. 03-1-0006c**

ORDER DENYING MOTION FOR  
RECONSIDERATION

**I. PROCEDURAL BACKGROUND**

On February 2, 2004, the Board issued an Order consolidating EWGMHB Case Nos. 00-1-0016, 03-1-0003 and 03-1-0006 under new Case No. 03-1-0006c.

On February 10, 2004, the Board issued its Final Decision and Order in Case No. 03-1-0003.

On March 17, 2004, the Board refused to reconsider its order or issue an Amended Final Decision and Order.

On October 15, 2004, the Board issued its Order on Compliance.

On February 11, 2005, the Board received a request for Compliance Hearing from Petitioners' in the above matter.

1 On April 14, 2005, the Board held a telephonic compliance hearing. Present were  
2 Presiding Officer, John Roskelley, and Board Members Judy Wall and Dennis Dellwo. Present  
3 for Petitioners were Jeanie Wagenman, Mr. and Mrs. Shawl, and Bruce Erickson. Present for  
4 Respondent were Peter Scott and Lloyd Nickel.

5 On May 20, 2005, the County filed a Motion to Reconsider. On May 25, 2005, the  
6 Board received a response to the Motion for Reconsideration from Petitioner Jeannie  
7 Wagenman.

8 On June 2, 2005, the Board issued its Amended Second Order on Compliance  
9 Regarding Motion for Reconsideration.

10 On June 9, 2005, Stevens County filed a Petition for Review with Stevens County  
11 Superior Court.

12 On September 29, 2005, the Board received Respondent's Statement of Action Taken  
13 to Comply.

14 On November 18, 2005, the Board held the third telephonic compliance hearing.  
15 Present were Presiding Officer, John Roskelley, and Board Members Judy Wall and Dennis  
16 Dellwo. Present for Petitioners was Jeanie Wagenman, representing Larson Beach  
17 Neighbors. Present for Respondent was Peter Scott, representing Stevens County.

18 On December 21, 2005 the Board issued its Third Order on Compliance, which was  
19 appealed to the courts. The Court of Appeals issued their decision on July 22, 2008.

20 On November 17, 2006, the Superior Court for Stevens County, No. 06-2-00021-6,  
21 Rebecca M. Baker, J., entered a judgment reversing the board's compliance order, ruling  
22 that neither the habitat nor the species was properly nominated for protection.

23 On July 22, 2008, the Court of Appeals of Washington, Division Three, filed its  
24 decision holding that res judicata did not bar the county from raising the nomination issue  
25 in the trial court and that substantial evidence does not support the Board's finding that the  
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1 habitat and species were properly nominated for protection, and the court *affirmed* the  
2 judgment of Superior Court.<sup>1</sup>

3 On May 20, 2009, the Board issued its Order Setting Remand Hearing.

4 On June 1, 2009, the Board held a telephonic remand hearing. Present were  
5 Presiding Officer, John Roskelley, and Board Members Joyce Mulliken and Ray Paoella.  
6 Present for Petitioners was Isaac Thomason, representing Jeanie Wagenman and Larson  
7 Beach Neighbors, and Jeanie Wagenman. Present for Respondent was Peter Scott,  
8 representing Stevens County.

9 On June 8, 2009, the Board issued its Order on Remand.

10 On June 17, 2009, the Board received Petitioners, Larson Beach Neighbors and  
11 Jeanie Wagenman's Motion for Reconsideration Order on Remand.

## 12 II. DISCUSSION

13 Petitioners filed a motion for reconsideration of the Board's Order on Remand. WAC  
14 242-02-832(2) stipulates that a motion for reconsideration must be based on at least one of  
15 the following grounds:

- 16 (a) Errors of procedure or misinterpretation of fact or law, material to the party seeking  
17 reconsideration;
- 18 (b) Irregularity in the hearing before the board by which such party was prevented from  
19 having a fair hearing; or
- 20 (c) Clerical mistakes in the final decision and order.

21 Petitioners assert reconsideration is warranted pursuant to WAC 242-02-832(2)(a) –  
22 misinterpretation of fact. The Petitioners arguments here are either without merit or were  
23 already reversed by the courts. Since the facts relevant to the Board's decision are *the*  
24 *evidence that was before the two courts*, the Board finds no misinterpretation of those facts  
25 for which reconsideration is necessary.

26 <sup>1</sup> *Stevens Co. v. Loon Lake Property Owners Association, et al.*, 146 Wn. App. 124; 187 P.3d 846; 2008 Wash. App.

**III. ORDER**

Petitioners' Motion for Reconsideration of the Board's June 8, 2009 Order on Remand is **DENIED**.

**SO ORDERED** this 23<sup>rd</sup> day of June 2009.

EASTERN WASHINGTON GROWTH MANAGEMENT  
HEARINGS BOARD

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John Roskelley, Board Member

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Joyce Mulliken, Board Member

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Raymond Paoella, Board Member