

the applicability of that information to Island County's situation. However, WEAN did not object to the admission of the study to the record in this case. We admit the TFW Buffer Study as supplemental evidence to this record and will give it appropriate weight.

The remand issues decided under this order are:

FDO Issue Subject

10 Agricultural Best Management Practices (BMPs)

14 Wildlife Functions and Category B Wetland Buffers

15 Type 5 Stream Buffers

Presumption of Validity, Burden of Proof, and Standard of Review

Ordinance amendments made in response to a finding of noncompliance are presumed valid. RCW 36.70A.320.

The burden is on Petitioners to demonstrate that the action taken by Island County is not in compliance with the requirements of the Growth Management Act (GMA, Act). RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), we "shall find compliance unless [we] determine that the action by [Island County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." In order to find the County's action clearly erroneous, we must be "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

Remand Issue 10 - Agricultural Best Management Practices

In the June 2, 1999 FDO, we said that until BMP requirements were enforced and an effective monitoring program was in place we were unable to find compliance. Further we concluded at pp. 59 and 60:

"As to Exemption (1), Existing and Ongoing Agriculture Activities, we have an additional major concern. We stated in *FOSC v. Skagit County*, #96-2-0025 (FDO 1-3-97) that the provision of RCW 36.70A.060(1) that regulations cannot prohibit uses lawfully existing on the date of their adoption pertain to natural resource lands and are not included in RCW 36.70A.060(2) pertaining to CAs. Further, we said in the September 16, 1998 compliance order in the same case that the GMA gives protection to designated agricultural resource lands from incompatible adjacent uses and brings into play the balancing act between GMA's goals for the conservation of the agricultural industry and

protection of critical areas. This balancing is not appropriate for non-designated agricultural uses.

The County's agricultural exemption applies to all existing and on-going agricultural activities whether they are on lands designated under .170 or not. This application of the agriculture exemption to lands not designated as long-term agriculture would allow avoidance of CA protection throughout rural Island County. This clearly fails to comply with the Act's requirement for protection of critical areas. **This provision so threatens CAs that by August 10, 1999, the County must amend the agriculture exemption to make it perfectly clear that it only applies to ongoing agricultural activities on lands designated under .170. If the County does not take such action by that date an order of invalidity on the agriculture exemption will be issued without further hearings.'**

Facing the threat of impending invalidity, Island County adopted an interim ordinance which limited the County's Critical Area Ordinance (CAO) exemption for existing ongoing agricultural activities to lands classified as Commercial Agriculture. In the following process the County adopted Ordinance C-29-99 to continue this interim provision until the replacement regulation was found to comply with the GMA.

Among its plethora of charges, WEAN made four major challenges to the compliance of the newly adopted ongoing agricultural exemption:

1. The exemption once again applies to agricultural activities in all zones including hobby farms in the Rural Zone (RR zone).
2. The exemption applies to farming activity begun illegally in violation of the wetlands ordinance adopted in 1984, thereby failing to comply with SEPA.
3. The exemption reduces already minimal stream and Category A wetland buffers thereby failing to include Best Available Science (BAS).
4. The exemption also requires insufficient protection for farmed Category B wetlands (wet meadows).

The County created an excellent record in support of its BMP provision choices as to WEAN challenges (2), (3) and (4). Rather than go into a lengthy discussion of the arguments on both sides, we will simply state that having carefully considered the entire record we are not convinced that the County was clearly erroneous in making those choices.

We wish to discuss more fully, however, WEAN's first challenge: the application of the exemption to ongoing agricultural activities in all zones.

WEAN's challenge on this issue focused on the following:

1. The County issued a definition of agriculture different from that in the GMA. The definition of agriculture in the BMP's allowed the County to apply resource land status in GMA goal balancing to non-resource lands. In this way, the County avoided the prescriptive aspect of the GMA definition by elevating a non-GMA goal (conservation of non-resource agriculture) above the GMA goal and requirement of protecting Critical Areas. The effect of the definitional change was to evade GMA's requirements for the protection of CAs. Previous Board decisions have made clear that the County may not define away a GMA requirement. Therefore, this County definition fails to meet GMA requirements for the protection of CAs with use of BAS.
2. The proposed applicability of the exemption to all zones in the entire County makes effective implementation and monitoring impossible.
3. The County has no data to support its claim that agriculture in Island County is so dependent on farming in critical areas and buffers that it must be exempted in every zone, no matter what scale or duration.
4. The County has provided no hard data in its attempts to tie the welfare of designated resource agriculture to the continuation of agricultural activities in critical areas outside of the commercial agricultural zone.
5. The County does not provide agriculture in the RR zone with GMA's agricultural protections, such as notification of adjacent landowners or application of its nuisance protection regulation. Apparently, in this respect, the County does not think these rural agricultural activities are terribly important.
6. If this farming activity in critical areas is so critical to the continuation of resource agriculture that it cannot survive without resource production from agricultural activity on these rural lands, they should have been designated resource agriculture.

The County responded in its August 8 brief:

"The most controversial aspect of the AG BMPs was the potential that farming activities on wet pastures that were existing and ongoing as of October 1, 1998, might have to be terminated if they were on lands zoned RA or R. The only participant in the County's public review process for AG BMPs that advocated limiting the AG exemption to CA

Zoned lands was WEAN. Every other participant, including the Coalition, believed that such a restriction would lead to very undesirable unintended consequences.

The County clearly understands that exempting existing and ongoing agriculture from CAO requirements (subject to BMP compliance) requires the balancing of several GMA goals. *See* Exhibit B.I to Ordinance C-151-99. The County is also well aware of the Western Board's prior ruling in *FOSC v. Skagit County*, No. 96-2-0025, that this balancing of GMA goals is not appropriate for lands that are not designated as agricultural lands of long term commercial significance. The County believes local circumstances, perhaps unique to Island County, justify permitting all existing and on-going agriculture that affects critical areas to continue if the activities are modified to comply with the County's adopted BMPs.

The 1997 GMA Amendments clearly intended that local planning decisions be given greater deference. RCW 36.70A.3201 recognizes that Comp Plans and DRs require counties to balance priorities and options in light of local circumstances. The burden and responsibility of harmonizing planning goals rests with local governments. The 1997 GMA Amendments specifically require that the County permit in rural areas, agriculture that is not designated long term commercially significant. RCW 36.70A.070(5)(a) and (b). When local circumstances are considered, a County's written record must explain how, and presumably why, the GMA planning goals are harmonized. RCW 36.70A.070(5)(a).

FOSC was decided before the Court of Appeals addressed the balancing issues in *HEAL v. CPSGMHB*, 96 Wn. App 522, 979 P2d 864 (1999). While *HEAL* focuses on best available science, the Court's conclusions regarding balancing of GMA goals are relevant. The Court specifically recognizes that the "...GMA requires balancing of more than a dozen goals and several specific directives in implementing these goals." *HEAL* recognizes as well that, when there is conflict, the choice of which science to use rests with the County, and that scientific evidence may be balanced against other factors, including GMA goals. The Western Board may disagree with the balance struck by the County. However, the balance cannot be rejected if it is supported by science in the record and is not shown to be clearly erroneous. The Legislature emphasized this point when it stated that the ultimate burden and responsibility for harmonizing planning goals rests with the County. RCW 36.70A.3201.

The 1997 GMA Amendments established a definition for rural character. While rural character may vary from county to county and is to be defined by a county, a county must adopt measures to protect it. RCW 36.70A.070(5)(c).

The findings (Exhibit C, C-151-99; the report and record of the County's Ag Remand Committee; and, the minutes of the four public hearings for C-151-99 (Exhibit 16 to this Response Brief) document the local circumstances that have shaped the County's AG

BMPs and establish the need to extend the Ag exemption to RA and R lands. In summary, they are:

1. Agriculture activities in the Rural Area cover more land area and involve more people to conduct them than Ag activity of long term commercial significance; and
2. Long term commercially significant agriculture is dependent on Rural Ag lands for grazing, hay and green chop; and
3. Many Rural Ag farmers rely on farmed wet meadows to support their Ag activities; and
4. Many farms, both large and small, already have adopted conservation plans, a strong indication of stewardship and concern for the environment; and
5. Farming in Island County is already a tenuous business and must comply with significant regulations by other regulatory agencies; and
6. Many of the Rural Ag farms are small, less than 10 acres in size, and therefore do not have the flexibility to alter farming practices to avoid critical areas completely; and
7. Small farm activities in the Rural Area are an integral part of Island County's rural character; and
8. If the Ag exemption is not extended to the Rural Area, many small farmers will have to terminate their farm activities, which could ultimately lead to the conversion of these farms to rural residential development.

All of these local circumstances require a unique harmonizing of GMA goals to avoid the unintended and undesirable consequences that will occur if protection of critical areas is given greater weight than encouraging existing small-scale farm activities to continue in the Rural Area."

The County was supported at the compliance hearing by other parties pleading with us to change our position from that which we had stated in the FDO.

Mr. John Graham, representing the Coalition, which originally opposed the County, stated:

"To insist now on applying the Critical Areas Ordinance to all the farms in the Rural Zone and Rural Ag Zone – when the BMPs now provide sufficient protections – would go in precisely the opposite direction to all the Coalition's work up until now on agriculture. It is certain to shut down some, if not many, of these small farms, increasing the likelihood of the sale of these lands for non-farm uses, and undermining the healing now starting in a county intensely polarized by application of the GMA.

So why not just tell these farmers to stop whining and volunteer themselves into Resource Ag status? Some of them might even make enough from their farming efforts to qualify, per the County's new rules in C-105-99.

But remember, the farms we're talking about here are small, on poorly drained soils good enough for grazing and not much else, where in many if not most cases the breadwinner has to have a second job, and where families stick it out because it's a life they treasure. There are a lot of such hardscrabble farms in IC and while they may not add up to much in profit dollars, they are crucial to the retention of the county's rural character. This unique situation, by the way, is why we cannot and should not be compared to rural counties on the mainland.

In writing broader designation criteria for the Resource Ag program last year, we had in mind opening it to small, dry, intensively worked farms such as those here that now make a decent living producing high quality vegetables and herbs. To now add these small, difficult, wet farms into the Resource Ag program would make the Designation essentially meaningless.

Finally, few, if any, of these farmers of wet meadows – even if they did qualify for Resource Ag status – will voluntarily invite the downzoning that joining Resource Ag status would mean for most of them. Why should they? Why should these farmers – just because WEAN alone believes the BMPs won't work – voluntarily undermine their land values and therefore the bank collateral they need to keep operating? The easier course will be just to sell to developers and that's exactly what will happen."

Participant Ray Gabelein, a fourth-generation farming landowner, joined in:

"One of GMA's main goals is to prevent urban sprawl. The best way to avoid sprawl is to encourage farmers and foresters to stay in business and thus preserve the rural character and open spaces that many enjoy in Island County and the state of Washington.....

Many of the larger farmers as well as smaller farms rely on rural zoned lands for hay production and grazing that makes their operation viable. To lose the use of these lands

could mean the end of their farm as a whole.....

The final BMP's enacted in Island County were the product of input by a host of interests, and were resisted by many farming professionals. Now they have been implemented, and a sole stakeholder remains in opposition. The objections filed by that party, if carried to a logical extension, disregard real-life farming's increasing pressures to quit in the face of unreasonable regulations, sell out and indirectly contribute to more sprawl. This Board is not constrained from "seeing the forest," and it should do so in this instance and find the county in compliance on FDO 10."

Mr. Tom Roehl on behalf of intervenors ICPRA added:

"Hardly any of the farming community are happy with the BMPs. Many who came to the meetings and hearings expressed feelings of anger and outrage that they must shoulder the burden of preventing impacts that are not caused by farming, but by the surrounding high density infill development on surrounding uplands over the years. In many cases this development and the diversion of county road waters onto many farmed lowlands is what has created the situation in the first place where the lands might now meet wetland definitions.....

Failure to extend the AG exemption (subject to BMPs) to all zones will in itself substantially interfere with the Goals and Policies of the GMA mandating Balancing of competing goals, Public participation, Preservation of rural character, Preventing the premature conversion of rural lands, Protecting property rights, Encouraging rural lifestyles, Protecting agricultural activities from incompatible neighbors (or organizations), etc."

Board Discussion

The majority of WEAN's challenges do not involve application of the ongoing agricultural exemption to lands designated Rural Agriculture (RA). There are several local circumstances shown by this record that are unique to Island County. The record shows that these RA lands are specifically mapped and

designated for agricultural use, are all in the agriculture tax program and are protected by the County's "right to farm" regulations. After careful consideration of this record, we find that the application of the ongoing agricultural activity exemption to lands designated RA complies with the Act.

The opposite is true for farming activities in the RR zone. The record contains no information as to how many acres are being "farmed" (no matter how casually), where those are located and what their cumulative impact might be on critical areas. The record does show that only 60 acres of land in the RR zone is in the agricultural tax program. Further, the County provides none of this RR "agricultural" activity with GMA protections such as notification to adjacent landowners or application of its nuisance protection regulation.

As WEAN stated in its August 16, 2000 reply brief:

"Outside of agricultural resource lands and the Rural Ag zone, relegating GMA's environmental and critical area protection goals to last place fails to achieve a compliant balance. While the County seeks to "protect" agriculture outside of resource agricultural lands from critical area restrictions, it provides no such protection to these activities from nuisance claims by adjacent landowners. This is a peculiar balance indeed. And while a vetoed section of ESB 6094 may have (for the purposes of argument) included a "goal" of permitting "the operation of rural-based agriculture" [County Response, p. 26 footnote] this says nothing about allowing agriculture of all sizes and duration in critical areas, or whether allowing these impacts is necessary for agriculture to occur in the rural lands. Opposing parties seek unlimited discretion in the balancing of GMA's goals. Generally, and in the specific case, this approach fails. The *HEAL* Court noted that protection of critical areas is a uniquely scientific inquiry. The County has not included the best available science. The Boards have noted the importance GMA places on the protection of critical areas. GMA's first requirements were for designation and protection of critical areas and designation and conservation of resource lands. The *HEAL* Court remarked on the critical nature of these public resources and their vulnerability to damage. Goal balancing must still achieve compliance with GMA's goals and requirements. The County has failed in this regard. On designated resource lands, petitioners have never disputed that it is appropriate to balance GMA's resource lands conservation and critical area protection goals and requirements. Petitioners argue that the proper balance has not been achieved. On non-resource lands throughout the entire county, the County insists on giving every other GMA goal primacy over GMA's environmental and critical area goals. This is not proper balancing. As the Board previously held, "application of the agriculture exemption to lands not designated as long-term agriculture would allow avoidance of CA protection throughout rural Island County. This clearly fails to comply with the Act's requirements for protection of critical areas." [WWGMHB, ICCGMC, et al v. Island County FDO at CD Law 33.] The Board should uphold its previous ruling."

We find WEAN's arguments to be persuasive. The County has done an excellent job of developing a record to demonstrate the unique local circumstances it faces. We have taken great effort to acknowledge those unique local challenges. We certainly do not discount the value of gardening and casual hobby farming to rural character and lifestyle. However, the County has not shown that it has appropriately balanced the goals of the Act in affording these "agricultural" activities an exemption from its critical areas Ordinance. If agricultural activity impacting critical areas in the rural zone is important enough to be afforded lessened critical areas protection, it must also be important enough to be designated RA and afforded "right to farm" protections.

As Gary Piazzon of Coupeville stated at the January 10, 2000, BOCC meeting:

"If we extend the agricultural exemption, which was designed for farmers in the community, to the casual farm-like operations in the entire Rural Zone, it will negate the impact of the critical areas ordinance. I want to emphasize that critical areas are called critical areas for a reason; they are critical to the health and well being of our environment."

The last thing we want to do is encourage small Island County farmers to give up on farming and sell their land to developers. Equally devastating would be the continued degradation of critical areas and resultant threats to water quality and anadromous fish habitat and survival in Island County. **We uphold our previous ruling regarding application of the ongoing agriculture exemption to any lands not designated Commercial Agriculture or Rural Agriculture. The County remains in noncompliance in that regard. We find no reason to make an invalidity determination, as requested by WEAN, as long as interim Ordinance C-29-99 remains in effect and precludes the application of the exemption to land in the RR zone.**

Remand Issue 14 – Wildlife Functions and Category B Wetland Buffers

Remand Issue 14 in the FDO stated:

"Clarify if the County is partially relying on Category B wetlands and their 25-foot buffers to protect wildlife functions. If the answer is no, analyze the adequacy of remaining provisions to protect wildlife functions. If yes, increase the buffers to at least 50 feet."

Island County adopted Ordinance C-03-00 to address this remand issue. This ordinance increased the Category B wetland buffer from 25 to 50 feet for lots located in the RR zone, if the permanent minimum lot size in the RR zone remains 5 acres. Supporting its request for a compliance determination the County made the following points:

1. The County specifically asked Andy Castelle, its critical areas consultant, to review all County regulations. He advised that, in concert, County regulations were sufficient to protect wildlife.
2. The County has made clear that the primary purpose of Category B wetland buffers is to protect wetland functions. However, the buffers do provide ancillary benefits to wildlife.
3. Even though the County found its other regulations sufficient, Category B wetland buffers were increased for lands in the RR zone, if the minimum lot size is 5 acres. This change covers almost 60% of the County.
4. The change in the buffer size was not extended to the RA, RF or CA Zones or the R zone if the minimum lot size is larger than 5 acres because there is no evidence in the record that for 10- or 20-acre lots, increasing critical area buffers is needed for wildlife.

Some of WEAN's compliance objections included:

1. There is no legitimate scientific rationale for the linkage of this action to the proposed rural density increase.
2. The buffer increase to 50 feet only applies to the RR zone. Urban Growth Areas, Joint Planning Areas, RAIDs, and the Rural Agriculture, Rural Forest (RF), and Commercial Agriculture Zones are not affected.
3. The County's changes in the size thresholds for designation of Category A and B wetlands has made very little improvement in actual acres of wetland protected.
4. The County's analysis of the adequacy of other provisions to protect wildlife was totally inadequate and did not include the best available science. The analysis in the record consists of one paragraph in a letter from the County's consultant.
5. The County has repeated its previous failure: without doing proper analysis to determine if its regulations actually protect wildlife, the County has simply proclaimed that they do.
6. The County should be reordered to analyze the adequacy of the County's regulations to protect wildlife functions.

Board Discussion

We consider the County's linkage of its proposed action on this issue to our decision on Remand Issue 5 (rural densities) to be inappropriate. However, since we have previously found compliance on Issue 5, that concern is now irrelevant.

Finding 37 of the FDO stated:

"The record showed that the County was relying in part on wetlands and their buffers to protect wildlife functions. BAS in the record showed that the County's 25-foot buffers for Category B wetlands are totally inadequate for this purpose."

In the body of the FDO we further explained our concern:

"The record is clear that, according to BAS a wetland buffer of at least 50 feet is necessary to provide wildlife protection. We understand that the wetland buffer sizes are not able to be directly challenged in this appeal. However, if the County is relying in part on Category B wetlands and their 25-foot buffers to protect wildlife functions, the County is not in compliance with the Act."

We commend the County for increasing to 50 feet Category B wetland buffers in the RR zone. We find no BAS evidence in the record that Category B wetlands in other zones require less than 50-foot buffers for wildlife functions. In the FDO, we required the County to analyze the adequacy of its other provisions to protect wildlife functions. The only "analysis" in the record is one paragraph in a letter from the County's own critical areas consultant proclaiming adequate protection.

Regarding Category B wetland buffers, we find that the County has complied with the FDO and the Act in the RR zone. In order to achieve compliance in all other zones, the County must either increase Category B wetland buffers to at least 50 feet or analyze (on the record and including BAS) the adequacy of its other provisions to protect wildlife functions in those zones.

Remand Issue 15 – Type 5 Stream Buffers

Remand Issue 15 in the FDO stated:

15. "Increase buffer widths for Type 5 streams using BAS and GMA's critical protection requirements.....

In addition to noncompliance, the following are found to be in substantial interference with the goals of the Act:

(2) 25-foot buffers for Type 5 streams substantially interfere

with goals (9) and (10)."

RCW 36.70A.320(4) provides that a County subject to a determination of invalidity has the burden of demonstrating that the ordinance it enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of the Act.

Island County adopted Ordinance C-03-00 to address this remand issue. The County has requested that we rescind the determination of invalidity and make a compliance determination. Ordinance C-03-00 increases the stream buffer from 25 to 50 feet for all Type 5 streams that are tributary to a salmon bearing stream and for all Type 5 streams located in the RR zone. By the terms of C-03-00, this change in buffer size will go into effect if the Western Board determines that the change does not substantially interfere with the goals of the GMA.

The County supported its request with the following arguments:

1. Type 5 streams are, by definition, not fish-bearing. They are typically intermittent or seasonal and are less than two feet wide. Not all Type 5 streams have been or are likely to be located on maps. Most, when water flows, discharge into a Type 3 or 4 stream or directly into Puget Sound. Some disappear with no visible outlet.
2. The FDO noted that 50-foot buffers for Type 5 streams were found in compliance with the GMA in *FOSC v. Skagit County*, 96-2-0025 and that Skagit and Island County records on this issue were very similar.
3. Island County still believes its record supports the use of a 25-foot buffer to protect in-stream water quality and habitat; this is particularly true for the RA, RF and CA zones, which have 10- or 20-acre minimum lot sizes. However, given that RCW 36.70A.172 directs counties to give special consideration to measures needed to protect anadromous fish, the County ordinance expands the buffer for Type 5 streams that discharge into salmon-bearing streams.
4. The County also acknowledges that in the RR zone, due to its many existing small lots, wildlife habitat is not likely to be preserved on these small lots. Therefore, the buffer is increased for all the RR zone. These changes affect 78% of the lands in the County.
5. The 25-foot buffer is retained for less than 25% of the County and then only for Type 5 streams that do not drain into salmon-bearing streams.
6. The County has made clear that stream buffers are intended to protect both water quality and fish habitat. Particularly for RR zone small lots, the 50-foot buffer is also intended to provide wildlife habitat.
7. In RAIDs, however, the stream buffers need only be for water quality, not wildlife habitat, and therefore 25 feet is appropriate.

WEAN expressed many concerns regarding the lifting of invalidity and compliance of Ordinance C-03-00 regarding Type 5 stream buffers including:

1. The County has not complied with the Board's order which clearly required increasing the 25-foot buffers for all Type 5 streams countywide, based on BAS and GMA's protection requirements. Instead, the County has engaged in an exercise attempting to justify 25-foot stream buffers.
2. The increase to 50 feet only applies to all Type 5 streams in the RR zone. The 25 foot buffer remains for all Type 5 streams that are not tributary to salmon bearing streams in the UGAs, Joint Planning Areas, RAIDs, RA RR, and Commercial Agricultural Zones.
3. The County's action has not included BAS as required by RCW 36.70A.172(1). There is no

scientific basis for limiting the proposed increase to only the RR zone.

4. Considering only pollution control and other water quality functions, the evidence of the ineffectiveness of 25-foot buffers to protect Type 5 streams is overwhelming. The County's consultant based the claimed effectiveness of these sub-minimal buffers to maintain water quality on controlled studies done under ideal conditions under different climate regimes. No studies of natural buffers support the assertion that 25 feet is adequate to protect aquatic resources from pollutants. This is not BAS and fails GMA's CA protection requirements.
5. The County has also failed to include BAS regarding functions (other than pollution control and instream salmon habitat) that critical areas perform; particularly as habitat and dispersal and movement corridors for terrestrial and amphibious wildlife. The science in the record is overwhelming that these other functions are among the most important performed by the CAs.
6. Due to the constrained island landscape, these small streams have importance for wildlife out of proportion to these streams' size and so should have buffers larger than 50 feet. This is an instance when "local circumstances" truly apply.
7. The Board should retain invalidity and remand this issue for compliance with a firm deadline of 60 days, after which a letter should automatically be sent to the Governor requesting imposition of sanctions.

Board Discussion

After careful consideration of the evidence in the original record, we stated in the FDO:

"WEAN is correct that the majority of these studies state that a minimum of 15-30 meters, not feet, is needed. None of the BAS, not even Mr. Castelle's own work supports 25-foot buffers for in-stream water quality, let alone other buffer functions....."

The County's adoption of 25-foot buffers for Type 5 streams fails to include BAS, fails GMA's critical area protection standards, and substantially interferes with GMA's goals for the protection of the environment."

We thought we made it perfectly clear in the FDO that BAS in the record and GMA's CA protection requirements both called for wider buffers for all Type 5 streams throughout Island County. Further, we found the 25-foot buffers to be so egregious as to substantially interfere with GMA goals 9 and 10.

After careful consideration of the evidence in the remand record (including the TFW Buffer Study and post hearing briefing regarding the study's findings and applicability to this issue) we reconfirm that decision. Letters from DOE, WDFW, CTED, Coalition, and WEAN in the record also support that conclusion.

In order to remove our previous finding of invalidity the County must make its 50-foot buffer

requirement applicable to all Type 5 streams throughout unincorporated Island County. If the County fails to provide this minimal protection within 90 days, we will request that the Governor impose sanctions.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 17th, day of November, 2000.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen
Board Member

William H. Nielsen
Board Member

Les Eldridge
Board Member

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