

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 PROTECT THE PENINSULA'S FUTURE and
4 WASHINGTON ENVIRONMENTAL COUNCIL,

5
6 Petitioners,

7 v.

8
9 CLALLAM COUNTY,

10
11 Respondent.
12

Case No. 00-2-0008

**ORDER FINDING
COMPLIANCE ON FIVE
ISSUES AND
SCHEDULING A
PROGRESS REPORT ON
THE REMAINING ISSUE**

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14 THIS Matter comes before the Board upon Clallam County's Motion for Order Finding
15 Compliance, September 13, 2005, and to set a compliance schedule on the remaining issue
16 regarding the pre-existing agricultural exemption remanded to the Board by the Court of
17 Appeals, Division II. The parties stipulate that the County has achieved compliance on the
18 three matters upon which the Board was upheld on appeal to the Clallam County Superior
19 Court and on two issues upon which the Board was reversed and no appeal was brought.
20 Clallam County's Second Statement of Compliance Actions – Stipulated, Motion for Order
21 Finding Compliance, September 13, 2005. Letter from Gerald Steel to the Presiding Officer,
22 dated December 23, 2005. As to the challenges to the pre-existing agricultural exemption,
23 Petitioners requested that a compliance schedule be set. Letter from Gerald Steel to the
24 Presiding Officer.
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27 This Board issued an order on October 10, 2005, setting a compliance hearing for these
28 purposes. Order Setting Telephonic Compliance Hearing. However, neither party appeared
29 for this hearing due to missed communications.
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1 Therefore, the Board held a second telephonic hearing on January 26, 2006, to consider the
2 stipulated finding of compliance and establish a compliance schedule on the remaining
3 issue. Attorney Ann M. Gygi appeared for the County. Attorney Gerald Steel represented
4 the Petitioner. All three board members attended.
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7 **Issues upon which the Parties Agree County Actions Are Now Compliant**

- 8 1. Buffer Exemption for Type 5 Waters Less than 500 feet in length. Ordinance No.
9 767, adopted January 25, 2005, deletes the exemption. The parties agree that this
10 amendment cures non-compliance on this issue (Issue No. 1 from the Board's
11 October 26, 2001, Order).
12
13 2. Definition of Minor New Development for Parcels under Five Acres in Size. (Issue
14 No. 3) Ordinance No. 767 revises the previous regulation by requiring the total
15 cumulative impervious area to be less than 10 percent of the gross parcel size and
16 limiting the maximum amount of land-disturbing activity to 15 percent of gross parcel
17 size (with a 20,000-square-foot maximum regardless of parcel size). The parties
18 agree that this amendment and clarification cures non-compliance on this issue.
19
20 3. Inconsistency between CCC 27.12.035(7) and 27.12.040. (Issue No. 5) Ordinance
21 No. 767 clarifies that the provisions for pre-existing uses in CCC 27.12.040 apply
22 only to those uses that also "are consistent with CCC 27.12.035". The parties agree
23 that this achieves compliance with respect to Issue No. 5 of the Board's October 26,
24 2001, Order.
25
26 4. Buffer Averaging to a minimum of 25 feet along Type 4 and 5 waters. (Issue 2
27 invalidity) The Clallam County Superior Court found that the Board's determination of
28 noncompliance and invalidity on this issue was erroneous and Petitioner did not
29 appeal that decision. Therefore, the parties agree that the Board should find CCC
30 27.12.715 compliant.
31
32 5. 35 feet Buffers for Type 1 Waters in Shoreline Master Program Urban and Suburban
Designations. The Clallam County Superior Court found that the Board's

1 determination of noncompliance and invalidity on this issue was erroneous and
2 Petitioner did not appeal that decision. Therefore, the parties agree that the Board
3 should find those provisions of the shoreline master program compliant.
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6 **Exemption from Critical Areas Ordinance for Ongoing Agriculture**

7 The Board's decision finding that CCC 27.12.035(7) is non-compliant and invalid was
8 reversed by the Superior Court, but the Court of Appeals, Division II, affirmed the decision in
9 part, reversed it in part and remanded it for further proceedings before the Board. *Protect*
10 *the Peninsula's Future v. Clallam County*, Docket No. 31283-2-II, October 25, 2005. The
11 County has filed a petition for review with the Washington Supreme Court and expects a
12 decision on that petition within the next four to five months.
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15 Petitioners withdrew their request for a compliance schedule at the telephonic compliance
16 hearing. The parties agree that a compliance hearing on this issue would be premature
17 before the Supreme Court acts, particularly since the Court of Appeals decision remands
18 the case to the Board for further proceedings.
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21 **ORDER**

22 The Board finds that **the County has achieved compliance** with respect to CCC
23 27.12.315.1 (Non-compliance Issue No.1 of the Board's October 26, 2001, Order); CCC
24 27.12.715 (Non-compliance Issue No.2 and Invalidity Issue No.1 of the Board's October 26,
25 2001, Order); CCC 27.12.900 (Non-compliance Issue No. 3 of the Board's October 26,
26 2001, Order); CCC 27.12.035(7) and 27.12.040 (Non-compliance Issue No.5 of the Board's
27 October 26, 2001, Order); and 35 feet buffers for Type 1 waters in shoreline master program
28 urban and suburban designations (Invalidity Issue No.2 of the Board's October 26, 2001,
29 Order).
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1 As to the remaining issue – the exemption of ongoing agriculture from the County’s critical
2 areas ordinance (Non-compliance Issue No. 4 and Invalidity Issue No.3 of the Board’s
3 October 26, 2001, Order) – the Board directs the County to provide a **progress report due**
4 **July 25, 2006**, advising the Board of the status of the case at that time. Upon review of the
5 progress report, the Board may issue an order for future progress reports or take other
6 action consistent with the status of the case.
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9 Should the Supreme Court deny review prior to July 25, 2006, either party may move this
10 Board to schedule briefing and a hearing to address the remaining compliance issue prior to
11 that time. The remand period for compliance shall extend until this Board issues a finding of
12 compliance on the remaining issue.
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16 ENTERED this 27th day of January 2006.
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21 _____
22 Margery Hite
23 Board Member

24 _____
25 Holly Gadbow
26 Board Member

27 _____
28 Gayle Rothrock
29 Board Member
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