

**BEFORE THE WESTERN WASHINGTON GROWTH  
MANAGEMENT HEARINGS BOARD**

OLYMPIC ENVIRONMENTAL COUNCIL et al.,	)	
Petitioners,	)	No. 00-2-0019
	)	
v.	)	
	)	COMPLIANCE
	)	ORDER
JEFFERSON COUNTY,	)	
	)	
Respondent,	)	
	)	

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**SYNOPSIS OF THE ORDER**

We find Jefferson County in compliance with the GMA regarding its designation of the Black Point property under Ordinance #02-0521-01.

**INTRODUCTION**

The compliance hearing in this case was held telephonically on August 14, 2001, at 3:00 p.m. Present at the hearing were Mr. David Alvarez, Deputy Jefferson County Prosecutor, representing the County, and Ms. Janet Welch, representing Petitioners Olympic Environmental Council, People for a Rural Quimper, and People for a Livable Community. Les Eldridge and William H. Nielsen were present for the Board.

**PRESUMPTION OF VALIDITY, BURDEN OF PROOF,  
AND STANDARD OF REVIEW**

Pursuant to RCW 36.70A.320(1), Ordinance #02-0521-01 is presumed valid upon adoption.

The burden is on Petitioners to demonstrate that the action taken by Jefferson County is not in compliance with the requirements of the GMA. RCW 36.770A320(2).

Pursuant to RCW 36.70A.320(3), we “shall find compliance unless it determines that the action by [Jefferson 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 actions 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).

### **CHALLENGES**

Ordinance #02-0521-01 was adopted in response to our remand of November 22, 2000 (Final Decision and Order). Petitioners did not challenge the private preserve and recreation (PP&R) designation which the County had retained for the Boy Scout Camp. Nor did they challenge the County’s public participation process during the reprocessing of the MCR 99-0001 nor the County’s rescission of the LAMIRD boundaries previously found noncompliant. Petitioners’ only challenge concerned the one unit per 10 acre (1:10) residential designation for the Black Point (RV Park) property.

Intervenors Bruce and Barbara Bailey removed themselves from the case on July 6, 2001, because the matters then pending before us no longer affected nor involved their property (Chevy Chase Golf Course).

### **CONTENTIONS**

Petitioners contended that the Black Point property should have remained a PPR designation with a 1:20 density because it was a recreational property meeting the criteria of Comprehensive Plan (CP) Land Use and Rural Policy LNP 3.3.3 which included the following:

“A rural residential land use designation of one dwelling unit per 20 acres (RR 1:20) shall be assigned to those areas throughout the County with:

- a. an established pattern of the same or similar sized parcels (i.e., 20 acres) or larger;
- b. parcels along the coastal area of similar size;
- c. areas serving as a “transition” to Urban Growth Areas or the Master Planned Resort;
- d. critical land area parcels;
- e. agriculture resource designated parcels;

- f. publicly owned forest lands; and
- g. lands adjacent to forest resource land.”

Petitioners contended that the language of LNP 3.3.3 was not permissive and stressed that the language stated “lands best meeting the RR 1:20 criteria *shall be assigned* the appropriate land use density.” (Emphasis supplied)

Petitioners claimed that the 1:10 designation was inconsistent with the CP. They maintained that the Black Point property met two of the LNP 3.3.3 criteria whereas, they asserted, it met none of the LNP 3.3.2 criteria.

The County responded that the property also met criteria a. and c. of LNP 3.3.2 which states:

“A rural residential land use designation of one dwelling unit per 10 acres (RR 1:10) *shall be assigned* to those areas throughout the County with: (emphasis supplied)

- a. an established pattern of the same or similar sized parcels (i.e., 10 acres);
- b. parcels along the coastal area of similar size;
- c. areas serving as a “transition” adjacent to Urban Growth Areas; and
- d. critical area land parcels.”

The County contended that, as the property met some criteria under both sections, the Board of County Commissioners (BOCC) had discretion to choose between the two densities. This was borne out, said the County, by the Staff Report (Exhibit #21-48) which recommended that 172 of the 191 acres of the Black Point property should be 1:20 and the remaining 19 acres abutting a 1:5 zone should be 1:10.

The County noted that, as three of the six parcels or 50% of the parcels that make up the RV park were less than 20 acres in size and two of the parcels were exactly 10 acres in size, elected county commissioners were within their range of discretion in choosing Rural Residential 1:10 for the Black Point area. The BOCC adopted the 1:10 density as the recommendation of the Planning Commission, a body statutorily required to provide recommendations to the BOCC.

## CONCLUSION

The staff recommendation to the Planning Commission regarding appropriate rural density for the Black Point property suggested some acreage be designated 1:20, and some, 1:10. The Planning Commission recommended to the BOCC that all of the property be designated 1:10. The BOCC accepted the recommendation of the Planning Commission. The BOCC, in findings, concluded that the Black Point property did not completely satisfy the RR 1:20 classification.

We find that the BOCC reviewed recommendations from staff and the Planning Commission which contained a variety of options from which the BOCC might choose. We note that the property in question comprises 192 acres of 62,000 acres in rural residential designations.

RCW 36.70A.3201 states that:

“...the legislature intends that the boards apply a more deferential standard of review to actions of counties and cities than the preponderance of the evidence standard provided for under existing law. In recognition of the broad range of discretion that may be exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the boards to grant the deference to counties and cities in how they plan for growth consistent with the requirements and goals of this chapter.”

We find that the County designation of Rural Residential, one unit to 10 acres for the Black Point area is within the range of discretion afforded by the Act. We do not have a firm and definite conviction that the County has erred in adopting this designation. Petitioners have failed to carry their burden of overcoming the presumption of validity under the clearly erroneous standard.

### **ORDER**

We find the County in compliance with the GMA regarding its designation of the Black Point property under Ordinance #02-0521-01.

Findings of Fact pursuant to RCW 36.70A.270(6) are adopted and attached as Appendix I and incorporated herein by reference.

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 22<sup>nd</sup> day of August, 2001.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Les Eldridge  
Board Member

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William H. Nielsen  
Board Member

### **Appendix I**

#### **Findings of Fact pursuant to RCW 36.70A.270(6)**

1. The staff recommendation to the Planning Commission suggested some acreage be designated 1:20, and some, 1:10.
2. The Planning Commission recommended to the BOCC that all of the property be designated 1:10.
3. The Planning Commission is a body statutorily required to provide recommendations to the BOCC.
4. The BOCC accepted the recommendation of the Planning Commission.
5. The BOCC, in findings, concluded that the Black Point property did not completely satisfy the RR 1:20 classification.
6. The property in question comprises 192 acres of 62,000 acres in rural residential designations.