



On March 27, 2002, Judge Christine A. Pomeroy issued Findings of Fact, Conclusions of Law and Order in Thurston County Superior Court Cause No. 01-2-00278-1 which reversed certain portions of the Board's February 9, 2001 compliance decision and order in the above cases. On August 23, 2002, in Cause No. 28704-8-II, Division II of the Court of Appeals issued a stay of Judge Pomeroy's Order as to the second portion of Paragraph 93 of the Thurston County Superior Court Order. The Court of Appeals declined to issue a stay as to the remainder of Paragraph 93 and as to the entirety of Paragraph 94. Therefore, in accordance with the portions of Judge Pomeroy's Order which were not stayed, we enter the following order:

In order to achieve compliance the County must:

1. Develop a MARP or successor buffer option that is supported by best available science, protects the functions and values of critical areas and preserves or enhances anadromous fisheries.
2. Narrow the exceptions to the buffer program so that anadromous fisheries are preserved or enhanced.
3. Develop a buffer plan for Type 4 and 5 waters that is supported by BAS, protects the functions and values of critical areas and preserves or enhances andaromous fisheries.

Because of the unusual scope and complexity of this order, under the provisions of Chapter 429, Laws of 1997, Section 14(3)(b), we set the following dates for compliance:

Initially, we give the County 180 days to take action to bring itself into compliance. However, if the County can show at 150 days that it is meeting its own attached Work Plan schedule, we will grant a 90-day extension to reach compliance in June 2003. If at 150 days, the County cannot show that a Planning Commission public hearing is actually being held in February 2003, we will schedule a compliance hearing in April 2003 with no time extension. We attach the County Work Plan as Attachment A.

The Swinomish Indian Tribal Community (Tribe) contends that the County should be required to provide salmon with some of the immediate protections they need while the County develops a plan that will bring itself into compliance. In its August 3, 2002 brief, the Tribe stated:

“We suggest that the Board establish a two-track compliance schedule. In the short term, the Board should require the County to adopt an interim ordinance on an emergency basis by September 30, 2002 that eliminates the deficient MARP program; eliminates the overbroad exceptions to the buffer program; applies to Type 4 and 5 waters in agricultural areas the same protective measures as are applicable to Type 4 and 5 waters outside of agricultural areas; and triggers the default option for farmers who have not selected one of the other options by the end of this month.”

We understand the Tribe's frustration and desire to give the County and the agricultural community a real incentive to adopt a plan which complies with the Act. However, we will not consider making such a drastic requirement without a better understanding of the impacts that interim requirement would have on the farming community and others in Skagit County. We therefore ask the parties to provide briefing on their opinions to the impacts of temporarily doing away with the ongoing agricultural exemption from the County's critical areas ordinance. We set the following briefing schedule:

September 19, 2002	Original briefs on impacts to farming and others (from all parties who wish to participate).
September 30, 2002	Responses to original briefs.
October 7, 2002	Replies to responses.

After carefully considering the above briefing, we will decide if an order regarding interim action is appropriate.

So ORDERED this 6<sup>th</sup> day of September, 2002.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Nan A. Henriksen  
Presiding Officer

**Attachment A**

**Work Plan**

**Revision of SCC 14.24.120. Ongoing Agriculture on Agricultural Lands**

<u>Action/Event</u>	<u>Date</u>
Board of County Commissioners Work Plan Approval	June 25, 2002
Public Meeting, all Stakeholders (unconstrained input)	June 25, 2002
Public Meeting, all Stakeholders (revised approach/ approaches)	September 2002
Work Period	
Draft Language	
Additional Public Meetings as necessary	October 2002 – January 2003
SEPA	
Public Hearing, Planning Commission	February 2003
Work Period	
Ordinance Adjustments	
Public Meetings (if necessary)	March – April 2003
Second Public Hearing, Planning Commission (if necessary)	May 2003
Final Adoption by Board of County Commissioners	June 2003