

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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3 DRY CREEK COALITION,

4 Petitioner,

5  
6 v.

7 CLALLAM COUNTY,

8 Respondent,

9  
10 And

11  
12 OLYMPIC MEADOWS LAND TRUST and NORTH  
13 PACIFIC LAND & TIMBER,

14  
15 Intervenor.

CASE NO. 08-2-0033

**ORDER FINDING COMPLIANCE**

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18 THIS Matter came before the Board on February 2, 2010 following the submittal of Clallam  
19 County's Compliance Report in response to the Board's June 12, 2009 Final Decision and  
20 Order (FDO). In that FDO the Board found Clallam County's Comprehensive Plan's Policy 4  
21 to be internally inconsistent with its zoning development regulations and thus non-compliant  
22 with the Growth Management Act (GMA).  
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25 The Board held a telephonic compliance hearing attended by Board members James  
26 McNamara and William Roehl with Mr. McNamara presiding. Board member Nina Carter  
27 was unable to attend the compliance hearing due to other Board related business, but  
28 reviewed the County's Compliance Report and participated in Board deliberations. Clallam  
29 County (County) was represented by Douglas Jensen. Petitioner did not attend the  
30 compliance hearing but had previously indicated via e-mail correspondence through its  
31 attorney Gerald Steel that it had no objections to the County's compliance efforts.  
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1 **I. BURDEN OF PROOF**

2 After a board has entered a finding of non-compliance, the local jurisdiction is given a period  
3 of time to adopt legislation to achieve compliance. RCW 36.70A.300(3)(b).

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5 After the period for compliance has expired, the board is required to hold a hearing to  
6 determine whether the local jurisdiction has achieved compliance. RCW 36.70A.330(1) and  
7 (2). For purposes of board review of the comprehensive plans and development regulations  
8 adopted by local governments in response to a non-compliance finding, the presumption of  
9 validity applies and the burden is on the challenger to establish that the new adoption is  
10 clearly erroneous. RCW 36.70A.320(1), (2) and (3). If a finding of invalidity has been  
11 entered, the burden is on the local jurisdiction to demonstrate that the ordinance or  
12 resolution it has enacted in response to the finding of invalidity no longer substantially  
13 interferes with the goals of the GMA. RCW 36.70A.320(4).

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16 In order to find the County’s action clearly erroneous, the Board must be “left with the firm  
17 and definite conviction that a mistake has been made.” *Department of Ecology v. PUD1*, 121  
18 Wn.2d 179, 201, 849 P.2d 646 (1993). Within the framework of state goals and  
19 requirements, the boards must grant deference to local governments in how they plan for  
20 growth:  
21

22 In recognition of the broad range of discretion that may be exercised by  
23 counties and cities in how they plan for growth, consistent with the  
24 requirements and goals of this chapter, the legislature intends for the  
25 boards to grant deference to the counties and cities in how they plan for  
26 growth, consistent with the requirements and goals of this chapter.  
27 Local comprehensive plans and development regulations require  
28 counties and cities to balance priorities and options for action in full  
29 consideration of local circumstances. The legislature finds that while  
30 this chapter requires local planning to take place within a framework of  
31 state goals and requirements, the ultimate burden and responsibility for  
32 planning, harmonizing the planning goals of this chapter, and  
implementing a county’s or city’s future rests with that community. RCW  
36.70A.3201 (in part).

1 In sum, the burden is on the Petitioner to overcome the presumption of validity and  
2 demonstrate that any action taken by the County is clearly erroneous in light of the goals  
3 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).  
4 Where not clearly erroneous and thus within the framework of state goals and requirements,  
5 the planning choices of the local government must be granted deference.  
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## 7 **II. ISSUE TO BE DISCUSSED**

8 Whether Clallam County has adequately addressed LAMIRD Policy No. 4 within its  
9 existing LAMIRD development regulations.  
10

## 11 **III. DISCUSSION**

12 The County succinctly recounts the background of this case in its Compliance Report:  
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14 In October of 2008, Clallam County adopted Ordinance No. 835 and  
15 Resolution No. 88, 2008, to address a compliance finding on Local Areas of  
16 More Intense Development (“LAMIRDs”) under WWGMHB No. 07-2-0018c.  
17 Petitioners Dry Creek Coalition (“DCC”) challenged the County’s LAMIRD  
18 amendments in the 2007 case, and also filed a new Petition creating the  
19 present proceeding.

20 The *Final Decision and Order* (“FDO”) of the Western Washington Growth  
21 Management Hearings Board (“Growth Board”) issued on June 12, 2009,  
22 found that Policy 4 of the County’s Comprehensive Plan (“CP”) was  
23 internally inconsistent with its zoning development regulations (“DRs”) in  
24 violation of RCW 36.70A.040(3) and -.130(1)(d). Specifically, the Growth  
25 Board found that the County had failed to adequately address LAMIRD  
26 Policy No. 4 within its existing LAMIRD development regulations.<sup>1</sup>

27 Policy No. 4 of the County’s CP, at CCC 31.02.263(4)e) reads:  
28

29 In order to maintain rural character, infill-development, and  
30 redevelopment within LAMIRDs should minimize impervious surfaces in  
31 order to maintain a more “open” or “rural” atmosphere; should have  
32 increased setbacks, buffers, and screening to separate land used from  
adjacent rural residential zones; should incorporat3e measures to

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<sup>1</sup> Clallam County’s Compliance Report at 1-2.  
ORDER FINDING COMPLIANCE  
Case No. 08-0-0033  
February 10, 2010  
Page 3 of 5

1 reduce the impacts of noise, odor, and traffic; and should require high-  
2 quality landscaping designed to protect rural character.

3 In light of this language, the Board ruled in June of 2009 that:

4 Such linkage [between the CP and DRs] is not explicit in Policy 4 which  
5 does not reference any provision of the County development  
6 regulations. Although such an explicit linkage is not specifically required  
7 by the GMA, the County could not point to any development regulations  
8 that, in fact, implemented this policy. For example, while the County  
9 cited provisions of its landscaping, planting, screening and alternative  
10 design standards in its development regulations, none of these  
11 provisions call for "increased setbacks, buffers, and screening to  
12 separate land uses from adjacent rural residential zones" as indicated by  
13 Policy 4. Instead, the referenced regulations apply to the same extent,  
14 and impose no additional protections, in the rural areas as they do  
15 elsewhere in the County. Consequently, the Board concludes that the  
16 County has failed to adopt regulations to implement this comprehensive  
17 plan policy.<sup>2</sup>

18 In response, the County adopted Resolution No. 86, 2009 and Ordinance No. 856, adopting  
19 a new Chapter 33.32 of the Clallam County Code ("CCC"). CCC 33.32 implements Policy  
20 No. 4 of the County's CP by adopting standards that apply to commercial, industrial, mixed  
21 use, duplex and multi-family in-fill or redevelopment within areas designated as LAMIRDs  
22 throughout Clallam County. Among its provisions, CCC 33.32 places additional limits on  
23 impervious surfaces, lot coverage and setbacks and imposes new buffering and screening  
24 requirements within LAMIRDs. In adopting this chapter, the County has in place  
25 development regulations to implement CP Policy No. 4 and has cured the area of  
26 noncompliance identified in the FDO.

#### 27 IV. ORDER

28 The Board finds that Clallam County has achieved compliance by its action. Therefore, the  
29 Board enters a finding of compliance and this case is closed.  
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<sup>2</sup> FDO at p. 13.  
ORDER FINDING COMPLIANCE  
Case No. 08-0-0033  
February 10, 2010  
Page 4 of 5

1 Dated this 10<sup>th</sup> day of February, 2010.

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4 James McNamara, Board Member

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7 William Roehl, Board Member

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10 Nina Carter, Board Member

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12 Pursuant to RCW 36.70A.300 this is a final order of the Board.

13 Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of  
14 this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the  
15 format set out in WAC 242-02-832. The original and three copies of the petition for  
16 reconsideration, together with any argument in support thereof, should be filed by mailing,  
17 faxing or delivering the document directly to the Board, with a copy to all other parties of  
18 record and their representatives. Filing means actual receipt of the document at the Board  
19 office. RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is  
20 not a prerequisite for filing a petition for judicial review.

21 Judicial Review. Any party aggrieved by a final decision of the Board may appeal the  
22 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial  
23 review may be instituted by filing a petition in superior court according to the procedures  
24 specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

25 Enforcement. The petition for judicial review of this Order shall be filed with the appropriate  
26 court and served on the Board, the Office of the Attorney General, and all parties within  
27 thirty days after service of the final order, as provided in RCW 34.05.542. Service on the  
28 Board may be accomplished in person, by fax or by mail, but service on the Board means  
29 actual receipt of the document at the Board office within thirty days after service of the final  
30 order.

31 Service. This Order was served on you the day it was deposited in the United States mail.  
32 RCW 34.05.010(19).