BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

SWINOMISH INDIAN TRIBAL COMMUNITY, et al., Petitioners, and WASHINGTON ENVIRONMENTAL COUNCIL, et al., Intervenors, v. SKAGIT COUNTY, Respondent, and AGRICULTURE FOR SKAGIT COUNTY, et al., Intervenors.	Case No. 02-2-0012c **ORDER FINDING CONTINUING NONCOMPLIANCE**

THIS Matter comes before the Board on a compliance hearing held on March 9, 2006. The County has filed its Report of Actions Taken to Achieve Compliance, indicating it has taken no legislative action to achieve compliance in this case. Skagit County's Response Brief at 5. Instead, the County seeks a finding of compliance based upon administrative actions taken. *Ibid* at 4. Skagit County Consolidated Diking, Drainage and Irrigation District No. 17, Skagit County Consolidated Diking, Drainage and Irrigation District No. 12, and Skagit County Consolidated Diking, Drainage and Irrigation District No. 3 (the Diking Districts) support the County's position. Dike District Intervenors Brief in Opposition to Tribe's Motion for Non-Compliance and Sanctions.

The Swinomish Indian Tribal Community (the Tribe) opposes a finding of compliance and seeks a recommendation from the Board that the Governor impose sanctions. Swinomish

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Tribe's Motion for Noncompliance and Sanctions, February 10, 2006. The Washington State Department of Fish and Wildlife (WDFW) also opposes a finding of compliance, arguing that the same flaws continue to exist that existed at the time of the Board's 2005 Compliance Order. Opening Brief of Washington Department of Fish and Wildlife Regarding March 9, 2006 Compliance Hearing (February 27, 2006).

I. SUMMARY OF DECISION

The County has not taken any legislative action to cure the compliance problems identified in this Board's Compliance Order of 2005. Instead, the County argues that the Board was in error in finding the County out of compliance in the first instance, and offers its continuation of the monitoring program the Board had reviewed as evidence of that fact. Skagit County's Report of Actions Taken to Achieve Compliance at 2-3; Skagit County's Response Brief at 7. This amounts to a motion for reconsideration of the Board's 2005 decision, a motion the County elected not to bring within the time lines established in WAC 242-02-832. The County's actions do not constitute compliance efforts and, without a change in the enactments already found noncompliant, there is nothing for the Board to review. The County's resolution and ordinance establishing the program for protection of fish and wildlife habitat in ongoing agricultural lands continue to be noncompliant.

However, the Board does not recommend sanctions be imposed at this time. The issues in this case are presently before the Washington Supreme Court and a decision is expected sometime this summer. Given the prospect of a final judicial resolution, sanctions are not appropriate at this time.

II. RECENT PROCEDURAL HISTORY

Most Recent Compliance Orders

This matter comes before the Board as a result of the Board's January 13, 2005, Compliance Order – Adaptive Management. In that order, the Board found Skagit County's

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approach to protecting fish and wildlife habitat areas in ongoing agricultural lands out of compliance because the County's program failed to provide the needed adaptive management to ensure that its protection measures are, in fact, protecting Fish and Wildlife Habitat Areas (FWHCAs). The Board found that the County's adaptive management program lacks benchmarks and triggers for corrective action and the ability to detect the cause of any deterioration in the existing functions and values of FWHCAs in a timely way so that the current protection measures could be adjusted to provide adequate protection of fish habitat. The January 13, 2005, order also set a compliance deadline of July 12, 2005.

The County appealed this 2005 decision to the Thurston County Superior Court. Later, the Board granted a certificate of appealability of the compliance order to the Court of Appeals. The Court of Appeals, Division II, accepted review of the compliance decision on adaptive management, and consolidated it with the Tribe's appeal of the Board's earlier decision on the County's critical areas regulations applicable to fish and wildlife habitat conservation areas in designated agricultural resource lands (December 8, 2003, Compliance Order), which had already been accepted for review by the Court of Appeals.

The January 13, 2005, Compliance Order - Adapted Management was a result of the County's failure to comply with the Board's December 8, 2003, Compliance Order, where the Board had found the County's less than precautionary approach to protecting the existing functions and values of FWHCAs noncompliant. The Board again found noncompliance because the County's adaptive management program lacked specificity particularly in regard to how monitoring would be conducted, how the resulting data would be used, what process would be used to take corrective action, and what timelines would be used to ensure corrective action and/or additional regulations if the monitoring demonstrated that the mandatory watercourse protective measures and voluntary best management practices were insufficient to protect critical areas and water quality from future degradation.

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Court Actions

On July 7, 2005, the Washington State Court of Appeals, Division II, stayed the January 13, 2005 Compliance Order for 30 days. On July 27, 2005, the Court of Appeals again stayed the order. On October 28, 2005, the Court denied another request by Skagit County to stay the compliance order.

On November 3, 2005, the Washington State Supreme Court granted the motion of the Tribe and the County to transfer the consolidated appeal to the Supreme Court.

Recent Compliance Proceedings

In a November 8, 2005, letter, the Swinomish Tribal Community requested the Board adopt a briefing schedule in light of the Court of Appeals' October 28, 2005, order, suggested a briefing schedule, and asked the County to respond to the Board in regard to its request by November 15, 2005. The County responded to the Tribe's letter on November 15, 2005, and suggested a somewhat different briefing schedule. The County also stated that the parties to this case had entered into settlement negotiations, but at that date, negotiations had not progressed enough to request an extension of the final decision and order date. After a prehearing compliance conference, the Board scheduled a March 9, 2006, compliance hearing and issued a briefing schedule.

On December 22, 2005, the County filed a motion for a continuance. The Tribe filed a response to the County's motion on December 27, 2005. On January 9, 2006, the Board issued an order denying an extension of the compliance deadline. The reasons for denying a continuance are summarized as follows: (1) the Growth Management Act does not give the Board the authority to grant a continuance or a stay, (2) the Board could not grant an extension without holding a hearing because the November 14, 2005, compliance deadline had passed, and (3) the County requested a finding that an extension of the compliance

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deadline was necessary because of the scope and complexity of the County's compliance efforts.

On January 13, 2006, the County filed its Statement of Actions Taken to Achieve Compliance with the Board.

The Tribe filed a motion to supplement the record on January 27, 2006. Skagit County responded to this motion on February 2, 2006. An order was issued on February 7, 2006, on the Tribe's motion to supplement the record. Order on Tribe's Motion To Add to the Record (February 7, 2006).

The Washington State Department of Fish and Wildlife filed its opening brief on February 9, 2006, opposing a finding of compliance. On February 10, 2006, the Tribe filed its motion for noncompliance and request for sanctions. On March 3, 2006, the Diking Districts Intervenors filed its opposition to the Tribe's motion for noncompliance and sanctions. Also, on that date the County filed its response and another motion to add the following documents to the record:

- Proposed Exhibit No. 615: GIS Map depicting 2004/2005 Survey Sites: Salmon Habitat Monitoring Program
- Proposed Exhibit No. 616: Final 1998 Section 303(d) lists, Washington Department of Ecology
- Proposed Exhibit No. 617: Salmon Recovery Funding Board 2005 (Sixth Round Funded Projects)
- Proposed Exhibit No. 618: Notice of Violation (11/30/2005)
- Proposed Exhibit No. 619: Skagit County Baseline Water Quality Monitoring Project Final Report (2001 – 2003 data)
- Proposed Exhibit No. 620: Tape of Oral Argument before the Supreme Court (February 7, 2006)

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- Proposed Exhibit No. 621: Letter dated 2/13/2006 from Skagit County Commissioners to Jeffrey Koenigs, Director, Washington Department of Fish and Wildlife Re: Skagit County Monitoring and Adaptive Management
- Proposed Exhibit No. 622: Letter dated 2/13/2006 from Skagit County Commissioners to Brian Cladoosby Re: Skagit County Monitoring and Adaptive Management
- Proposed Exhibit No. 623: Letter dated 2/24/2006 from Greg Hueckel, Washington Department of Fish and Wildlife to Skagit County Commissioners
- Proposed Exhibit No. 624: Letter dated 2/21/2006 from Brian Cladoosby to Skagit County Commissioners
- Proposed Exhibit No. 625: Letter dated 11/30/2005 from Jay Derr to Alix Foster
- Proposed Exhibit No. 626: 2004 Water quality Assessment (Final) – Category 5 Listings for WRIA3

On March 6, 2006, the Tribe moved to add the following documents to the record:

- Proposed Exhibit No. 627: Public Works Board's List of Diking and Drainage Districts in Skagit County
- Proposed Exhibit No. 628: Letter dated 3/1/06 from Brian Cladoosby to Commissioners Re: Skagit County Monitoring and Adaptive Management

On March 9, 2006, the Board held a compliance hearing in Mount Vernon. Jay Derr represented the County, Alix Foster represented the Tribe, and Board Members Holly Gadbaw and Margery Hite attended. Board Member Gayle Rothrock did not attend due to a family emergency. However, a transcript of the hearing was prepared and Ms. Rothrock has reviewed that transcript pursuant to WAC 242-02-070(2).

At the hearing, the County presented a motion that asked for a continuance of the hearing in order to respond to the Tribe's motion to add Exhibit No. 628, which it says the Tribe

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suggests are examples of standards, benchmarks, and triggers. The Tribe responded orally that it felt the hearing should proceed, but the County could be given a time for response.

Rulings at the Hearing

In response to the Board's questions, neither the County nor the Tribe stated that it had any objections to the other party's proposed supplements to the record, including Proposed Exhibit No. 629, the March 29, 2006, Declaration of Ann Bylin, Rick Haley, and Jeff McGowan attached to the County's motion for a continuance. The County, however, requested time to respond to Exhibit No. 628 and asked that the corrected list of funded projects be allowed as a substitute for Exhibit No. 617.

The Presiding Officer made the following rulings:

- Proposed Exhibit Nos. 615 through 629 were allowed to be added to the record.
- The County was given two weeks, until March 23, 2005, to respond to the Tribe's Exhibit No. 628.
- A substitution for Proposed Exhibit No. 617 was allowed.
- The County could submit information and exhibits after the hearing explaining why certain monitoring sites were eliminated.

Post Hearing Submittals

- On March 23, 2006 the County submitted its response to Tribe's 628 and a Motion to Supplement the Record with the following Exhibits:
    - Proposed Exhibit No. 630: September 19, 2003, Letter to Rick Haley, Skagit County Public Works Director from Sally Lawrence, Washington Department of Ecology
    - Proposed Exhibit No. 631: Hansen Creek Watershed Analysis, pages 12-38

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- On March 29, 2006, the Tribe submitted Swinomish Tribe's Response to County's Motion to Supplement the Record and Motion to Strike. The Tribe objects to the addition of Proposed Exhibit No. 630 because its submission is beyond the deadline in the Board's Prehearing Compliance Order, has been made to respond to the Tribe's hearing arguments, and is beyond the scope of the Board's direction at the hearing. The Tribe does not object to Proposed Exhibit No. 631. The Tribe also objected to page 2, line 16 to page 3, line 20 of the County's motion for the same reason it objects to the addition of Proposed Exhibit No. 630.

Ruling on Proposed Exhibit Nos. 630 and 631

Both these exhibits will be admitted. Exhibit No. 630 responds to a Board request for information and the Tribe did not object to the addition of Exhibit No. 631. The motion to strike is DENIED for the same reasons Exhibit No. 630 is being admitted and the Board will give the cited language its appropriate weight.

III. BURDEN OF PROOF

Where the local jurisdiction has enacted new legislation to achieve compliance with the Board's prior finding of noncompliance, that new legislation is presumed valid:

> Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

RCW 36.70A.320(1).

No new legislation was adopted by the County for purposes of this compliance hearing.

IV. DISCUSSION

Positions of the Parties

The County reports that it has undertaken five major activities since the Board's decision in 2005: continuing review of best available science (BAS) and obtaining support from state agencies for the County's monitoring program; completion of the first years of baseline

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monitoring to identify existing conditions; responding to data, referrals to other agencies, and enforcement actions; participation in habitat restoration; and negotiating a resolution of issues relating to drainage maintenance in the Skagit delta. Skagit County's Report of Actions Taken to Achieve Compliance at 2-3. The County further states that its staff is engaged in monitoring, adaptive management, implementation and enforcement of the ordinance on a daily basis. *Ibid* at 1.

The Diking Districts join the County in arguing that compliance has been met through the administrative efforts of the County. Dike District Intervenors Brief in Opposition to Tribe's Motion for Non-Compliance and Sanctions at 5-7. The Diking Districts particularly point to a negotiated agreement between the Tribe, WDFW, Department of Ecology (Ecology) and the Districts.

The Tribe, on the other hand, argues that the Board has no jurisdiction to determine compliance of the County's administrative efforts since no legislative action was taken. Tribe's Motion for Non-Compliance and Sanctions at 10. Citing RCW 36.70A.280(a), the Tribe argues that the Board "cannot revisit a prior legislative action that is the subject of a prior order of non-compliance where the County has merely added documents to the record in support of its position and has not taken any legislative action to adopt either a new regulation or an amendment thereto." *Ibid.* Even if the Board had such jurisdiction, the Tribe argues that the County's actions do not bring it into compliance. *Ibid* at 11-12. The Tribe asserts that the County's program fails to identify causal mechanisms for degradation of streams and to make the policy decisions setting performance measures and benchmarks for corrective action. *Ibid* at 13.

Sanctions against the County should be recommended, the Tribe argues further, since the County has not proceeded in good faith to meet GMA requirements or to comply with valid Board orders. *Ibid* at 17. The Tribe asserts that the County has failed to enact a compliant

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critical areas ordinance for fish and wildlife habitat in ongoing agricultural lands for fifteen years, even though salmon populations have continued to decline and are now "threatened." *Ibid* at 19. The Tribe claims that the County will only make changes in its critical areas ordinance if compelled to do so and that sanctions are the only effective means of sending a signal to the County that the Board will no longer wait for compliance. *Ibid* at 22-23.

WDFW also argues for a finding of noncompliance. Opening Brief of Washington Department of Fish and Wildlife Regarding March 9, 2006 Compliance Hearing (Corrected Copy) at 2. WDFW argues that the County has not changed its resolution or its monitoring program in response to the Board's 2005 Order. *Ibid* at 7. The resolution still does not contain meaningful triggers for corrective action, will not produce data adequate for assessing the effectiveness of the County's critical areas ordinance, and will not provide information regarding cause and effect relationships between habitat conditions and specific measures under the County's critical areas ordinance, WDFW concludes. *Ibid* at 3.

Board Discussion

The Board's decisions in this case have found that the County's less than precautionary approach of using mandatory watercourse measures and voluntary best management practices to protect fish and wildlife habitat in on-going agricultural resource lands lacked an effective adaptive management program. For this reason, the Board's 2003 decision found that the County's approach failed to protect the existing functions and values of those critical areas. Compliance Order (December 8, 2003). In the Board's 2005 decision, the Board found that the County's adaptive management program does not comply with RCW 36.70A.040, 36.70A.060 and 36.70A.172. Compliance Order – Adaptive Management, (January 13, 2005).

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The County has not amended the noncompliant enactments, nor has it adopted new ones. Instead, the County asks the Board to find that its administrative actions in carrying out the noncompliant resolutions make the program compliant or show that the program is compliant. Skagit County's Report of Actions Taken to Achieve Compliance at 2-3.

The growth boards have jurisdiction to determine whether comprehensive plans, development regulations and amendments to them are compliant with the Growth Management Act. RCW 36.70A.290. The boards also have jurisdiction over the compliance of specific GMA mandated actions, when timely challenged. RCW 36.70A.280 and 36.70A.290(2). These include, among others, adoption of OFM population projections and countywide planning policies. RCW 36.70A.280(1)(b), and 36.70A.210.

However, as Skagit County argued persuasively in *Lake Cavanaugh Improvement Association v. Skagit County*, WWGMHB Case No. 04-2-0011, the Board does not have jurisdiction to enforce the comprehensive plan or development regulations, nor does it have jurisdiction to find a comprehensive plan provision or development regulation noncompliant because of the way the County has applied it in a permit decision. *Lake Cavanaugh Improvement Association v. Skagit County*, WWGMHB Case No. 04-2-0011, Compliance Order, August 1, 2005.

Here, the County argues that it can seek a finding of compliance from the Board when it has not altered its noncompliant adoptions. To find compliance, the County urges the Board to review the County's administrative actions and, essentially, re-visit the Board's determination that the County's enacted program is noncompliant. This the Board cannot do.

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First, even assuming the County is curing any compliance defects through its administrative practices, this would not constitute compliant GMA action since there would be no legislation ensuring that these practices continued.

Second, by reviewing administrative actions to determine compliance, the Board would be circumventing the public participation requirements of the GMA. There would be no process by which the public could participate in the adoption of a County course of action because the actions would not themselves be mandated by adopted local legislation.

Third, re-opening the Board's prior decision without a change in the legislative enactments found to be noncompliant is essentially reconsideration of the Board's prior decision. WAC 242-02-832 requires that any motion for reconsideration be brought within ten days of service of the final decision. The time for a motion for reconsideration has long since run on the last Board decision in this case. (Compliance Order – Adaptive Management, January 13, 2005).

The County effectively seeks to challenge the Board's January 13, 2005 decision over a year after its issuance. It has not changed the enactments which were found noncompliant and has no basis, therefore, for asserting that it has achieved compliance. Taken to its logical extreme, the County's position would mean that no order of non-compliance would ever require compliance. In fact, it would have the practical effect of nullifying the Board's orders. Each time that compliance was due, the local jurisdiction could simply refuse to act and assert that the Board was wrong in its prior order. Such an interpretation of the requirements for compliance is not found anywhere in the GMA nor does it fit within the overall structure of the GMA's requirements, especially in light of the speedy deadlines for action dictated in RCW 36.70A.300. We find that the County has not acted to achieve compliance in this case and that its program for protecting critical areas in ongoing agricultural lands continues to be non-compliant with RCW 36.70A.040, 36.70A.060 and 36.70A.172.

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At the hearing, the County was asked why it had not stipulated to a continued finding of noncompliance as the Tribe had requested. From the explanation of the County's attorney at the compliance hearing, it appears that the County did not stipulate to a finding of continuing noncompliance because the County feared that this would amount to an admission that the County's program was noncompliant. Since the County is actively pursuing its appeal of the Board's determination that its program is noncompliant, the County was unwilling to jeopardize its position on appeal. While it certainly would have been reasonable to include in the stipulation language to the effect that the stipulation did not constitute a waiver of any arguments on appeal, the adversarial relations between the County and the Tribe have colored the actions of all in this case. This is unfortunate and probably resulted in a great deal of largely unnecessary work by counsel on all sides.[1]

On the issue of sanctions, the fact of a forthcoming Supreme Court decision on the issues in this case is central to our determination not to recommend sanctions at this time. As we said in our order denying the County's request for an extension, it is not in our power to order a stay based on an appeal to the courts. Order Denying Motion for Extension (January 9, 2006). Nevertheless, we recognize the significance of a final decision on these important issues and will await the Court's decision before considering any recommendation for sanctions.

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[1] As a note to the parties for future reference: The Board cannot extend the date for compliance if that date has already passed. The GMA provides that the Board shall hold a hearing when the date for compliance has expired:

> After the time set for complying with the requirements of this chapter under RCW 36.70A.300(3)(b) has expired, or at an earlier time upon the motion of a county or city subject to a determination of invalidity under RCW 36.70A.300, the board shall set a hearing for the purpose of determining whether the state agency, county, or city is in compliance with the requirements of this chapter.

RCW 36.70A.330(1).

If the County would like an extension of a compliance period based on the unusual scope and complexity of the compliance efforts (RCW 36.70A.300(3)(b)), a motion making that request should be filed prior to the expiration of the compliance period.

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V. FINDINGS OF FACT

1. Skagit County is a county, located west of the crest of the Cascade Mountains, that is required to plan pursuant to RCW 36.70A.040.
2. The Swinomish Indian Tribal Community (the Tribe) was an original petitioner in this case.
3. Skagit County Consolidated Diking, Drainage and Irrigation District No. 17, Skagit County Consolidated Diking, Drainage and Irrigation District No. 12, and Skagit County Consolidated Diking, Drainage and Irrigation District No. 3 (the Diking Districts) and the Washington State Department of Fish and Wildlife (WDFW) were granted leave to intervene and are also parties to this case.
4. In its prior compliance order, this Board found that the adaptive management program, adopted in Resolution R20030210, lacked specificity particularly in regard to how monitoring would be conducted, how the resulting data would be used, what process would be used to take corrective action, and what timelines would be used to ensure corrective action and/or additional regulations if the monitoring demonstrated that the mandatory watercourse protective measures and voluntary best management practices were insufficient to protect critical areas and water quality from future degradation. Compliance Order (December 8, 2003).
5. In its latest compliance order, this Board found that Resolution R20040211, enacted to provide specificity with respect to the County's adaptive management program for critical areas (fish and wildlife habitat conservation areas) in designated agricultural resource lands lacks benchmarks, triggers for corrective action and the ability to detect the cause of any deterioration in the existing functions and values of FWHCAS in a timely way so that the current protection measures could be adjusted to provide adequate protection of fish habitat. Therefore, it fails to comply with the Growth Management Act. Compliance Order – Adaptive Management (January 13, 2005).

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6. The County has taken no legislative action with respect to protection of fish and wildlife habitat conservation areas (FWHCAs) in designated agricultural resource lands (ongoing agriculture) since the Board's last compliance order in this case.

7. The County has not taken legislative action to modify Resolution R20040211, nor has it adopted other regulations to bring its measures to protect FWHCAs in ongoing agricultural lands into compliance with the GMA.

VI. CONCLUSIONS OF LAW

A. This Board has jurisdiction over the parties and the subject-matter of this case.

B. The time for compliance set in the Compliance Order – Adaptive Management (January 13, 2005) has passed.

C. The County has failed to take legislative action to achieve compliance in this case since the Board's latest finding of noncompliance on January 13, 2005.

D. Without a compliant adaptive management program, the County's protection measures for FWHCAs in designated agricultural resource lands (of ongoing agriculture) continue to fail to comply with the requirements for protection of critical areas in the Growth Management Act, RCW 36.70A.040, 36.70A.060, and 36.70A.172.

VII. ORDER

Based on the foregoing, the County's motion for a finding of compliance is DENIED. The Tribe's motion for a recommendation of sanctions is also DENIED. The County's adaptive management program pertaining to the protection measures for fish and wildlife habitat conservation areas in ongoing agricultural lands continues to make the County's approach to protecting these areas NONCOMPLIANT with the Growth Management Act. The County is directed to take legislative action to achieve compliance in accordance with the Board's January 13, 2005, order no later than **October 9, 2006**.

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A **progress report** shall be due from the parties within 10 days of the issuance of a decision in this case by the Washington State Supreme Court. The progress report shall indicate the proposed procedural steps for Board action following the Court's decision.

Unless modified by written order of this Board, the following schedule shall apply:

COMPLIANCE SCHEDULE

Compliance due	October 9, 2006
County's Report of Actions Taken Due and Index (copies to all parties)	October 16, 2006
Additions to the Index and/or Motions to Supplement the Record	October 26, 2006
Objections to Motions to Supplement the Record	November 2, 2006
Anticipated Date of Order on Motions to Supplement the Record	November 13, 2006
Written Objections (if any) to a Finding of Compliance	November 15, 2006
County's Response (if necessary) to any Objections to Compliance	November 29, 2006, 4 p.m.
Compliance Hearing (location to be announced)	**December 7, 2006, 9:30 a.m.**

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

<u>Reconsideration</u>. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. <u>Filing means actual receipt of the document at the Board office.</u> RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

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<u>Judicial Review</u>. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means <u>actual receipt of the document at the Board office</u> within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

<u>Service</u>. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

SO ORDERED this 1st day of May 2006.

_____
Holly Gadbaw, Board Member

_____
Margery Hite, Board Member

_____
Gayle Rothrock, Board Member

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