

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
EASTERN WASHINGTON REGION
STATE OF WASHINGTON

KITTITAS COUNTY CONSERVATION
COALITION, RIDGE, AND FUTUREWISE
(KCCC), WASHINGTON STATE
DEPARTMENT OF COMMERCE
(COMMERCE)

Petitioners,

v.

KITTITAS COUNTY,

Respondent,

BUILDING INDUSTRY ASSOCIATION OF
WASHINGTON (BIAW), CENTRAL
WASHINGTON HOME BUILDERS
ASSOCIATION (CWHBA), MITCHELL
WILLIAMS, d/b/a MF WILLIAMS
CONSTRUCTION CO., TEANAWAY
RIDGE, LLC, KITTITAS COUNTY FARM
BUREAU, SON VIDA II, LP

Intervenors,

ART SINCLAIR and BASIL SINCLAIR,

Amicus Parties.

Case Nos. 07-1-0004c and 07-1-0015

ORDER FOLLOWING REMAND FROM
WASHINGTON STATE SUPREME COURT,
ACKNOWLEDGING COMPLIANCE AS TO
CASE 07-1-0015, ISSUE 8 (AIRPORT
OVERLAY), CONTINUING NON-
COMPLIANCE AS TO LEGAL ISSUES 1, 6,
10, 11 AND 14 (07-1-0004c) and LEGAL
ISSUES 1, 2, 3, 4, 6 AND 7 (07-1-0015),
AND COORDINATING COMPLIANCE
SCHEDULE

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KITTITAS COUNTY BOARD OF COMMISSIONERS

I. SYNOPSIS

These two cases represent multiple issues related to GMA compliance.

1 The Parties and the Board agree to a Coordinated Compliance Schedule extension of one
2 year, with compliance due by September 2012.

3 With the exception of the compliance schedule changes and Legal Issue 8 (Airport Overlay)
4 the Final Decision and Order in Case No. 07-1-0015, and the Sixth Compliance Order in
5 Case No. 07-1-0004c as to Legal Issues 6 and 14 (RE: City of Kittitas UGA), remain in
6 effect. In addition, the Board lifts the continued application of abeyance as to Legal Issues
7 1, 10, and 11, in Case No. 07-1-0004c, and remands those, and all remaining issues to
8 Kittitas County to take legislative action to achieve compliance with the GMA.

9 II. PROCEDURAL HISTORY

10 On August 20, 2007, the Board issued its Final Decision and Order (FDO) in Case No. 07-1-
11 0004c. The case represented a challenge to various amendments to Kittitas County's
12 Comprehensive Plan (CP) enacted via Ordinance 2006-63. Since the August 2007 FDO,
13 the Board has issued six compliance orders.¹

14 On March 20, 2008, the Board issued its FDO in Case No. 07-1-0015. The case challenged
15 a number of development regulations adopted by Kittitas County (County) in its
16 Development Regulation (DR) Update, Ordinance 2007-22.

17 On September 19, 2007, Case No. 07-1-0004c, Legal Issues 1, 10, and 11 were appealed
18 to Kittitas County Superior Court.

19 On April 30, 2008, Case No. 07-1-0015 was appealed to the Kittitas County Superior Court,
20 which issued a Stay.² Subsequently, Case Nos. 07-1-0004c and 07-1-0015 were
21 consolidated by the Washington State Supreme Court, and a decision was issued July 28,
22 2011 in the challenged matters.³

23
24 ¹ KCC et al., v. Kittitas County, Case No. 07-1-0004c, Sixth Order on Compliance, July 28, 2011

25 ² Kittitas County Superior Court Case No. 08-2-00195-7

³ *WA State Supreme Court*

1 The Washington State Supreme Court stated in its July 28, 2011 decision, "We hold that the
2 Board did not improperly disregard evidence and appropriately found that the County
3 violated the GMA by failing to: develop the required written record explaining its rural
4 element, include provisions in its Plan that protect rural areas, provide for a variety of rural
5 densities, protect agricultural land, and protect water resources. However, we find that the
6 Board improperly found that the County's airport overlay zone is noncompliant with the
7 GMA. Finally, we decline to reach the questions of whether the Board applied a bright line
8 rule to determine appropriate rural density and failed to protect rural areas in specific
9 development regulations."⁴

10 On September 23, 2011, Kittitas County Superior Court affirmed the Board's finding that the
11 County remained out of compliance as to the City of Kittitas UGA, Legal Issues 6 and 14.⁵

12 On October 4, 2011, the Board held a telephonic Status Conference. Panel members
13 present were Joyce Mulliken, Presiding Officer, Raymond Paoella, and James McNamara,
14 Board Members. Parties were represented as follows: Tim Trohimovich for Petitioners
15 KCC/RIDGE/Futurewise, Kristin Mitchell for Petitioner Department of Commerce, Jeff
16 Slothower for Intervenors Teanaway Ridge, LLC, and Kittitas County Farm Bureau, Timothy
17 Harris for Intervenors BIAW, CWHBA, and Mitchell Williams, d/b/a Mr. Williams Construction
18 Company, Neil Caulkins for Kittitas County, and Katherine Kennison for the City of Kittitas.

19 III. DISCUSSION AND ANALYSIS

20 Prior to the Status Conference, Kittitas County (County) issued a Memorandum, Scope of
21 Work and Deliverables, and proposed GMA Compliance Schedule timeline to the Parties
22 and the Board. The Board received a response brief from Petitioners Kittitas County
23 Conservation Coalition, RIDGE and Futurewise (KCCC) in which the Petitioners were
24 supportive of the County's request for a one year extension, with minor modifications.

25 ⁴ *Kittitas County v. E. Wash. Growth Mgmt. Hearings Bd.* 84187-0, July 28, 2011

⁵ Kittitas County Superior Court Case No. 11-2-00158-2

1 At the Status Conference Petitioners and Intervenors, collectively, agreed to the County's
 2 proposed GMA compliance schedule because of the amount of work required and the need
 3 to involve all segments of the public.

4 The County's proposed schedule to achieve compliance with the GMA is currently underway
 5 with the following proposed GMA compliance schedule⁶:

DATE	TASK
September – November, 2011	Preliminary Tasks & Assessments <ul style="list-style-type: none"> • Public information and involvement plan • Stakeholder interviews (moved to later date) • Data/mapping for existing rural lot pattern • Data/mapping for preliminary approved and proposed lot pattern • Mapping for existing development constraints (e.g. water, access, critical areas) • Population (growth) data • Assemble data and draft Plan/Dev Regs from initial update work • Assemble examples of rural policies, etc. from other similar Counties
November – December, 2011	Preliminary Analysis <ul style="list-style-type: none"> • Rural character, including visual survey • Rural growth pattern and growth capacity
January, 2012	Public Meeting Open House #1 <ul style="list-style-type: none"> • Present results of initial technical assessments and analysis to community • Obtain feedback from community • Stakeholder interviews
February, 2012	Develop preliminary recommendations for GMA compliance for BOCC briefing
Early March, 2012	Draft report available for public review
Late March, 2012	Public Meeting Open House #2 <ul style="list-style-type: none"> • Present recommendations for GMA compliance • Obtain feedback from community

⁶

1 2 3 4 5 6 7	April, 2012	Develop final recommendations for GMA compliance for BOCC briefing
8 9 10 11	May – June, 2012	Draft policies and development regulations <ul style="list-style-type: none"> • Draft policies for Rural Element, and other elements as needed (e.g. Land Use Element, Housing Element, Resource Lands Element) • Draft development regulations (e.g. PBCP, MPR, PUD, subdivisions) • Kittitas County Conference of Governments (KCCOG) review of Countywide Planning Policies, as needed, for PUDs outside of UGAs
12 13 14 15 16 17	July – August, 2012	Public Hearings <ul style="list-style-type: none"> • Planning Commission review – public hearing scheduled _____ • SEPA Review and threshold determination • Board of County Commissioners review – public hearing _____
18 19 20 21	September, 2012	Board of County Commissioners adopt enabling documents

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Due to the unusual scope and complexity of these two cases the Board has determined a one year extension to be a reasonable time for the county to reach compliance with the requirements of the GMA. In addition, the Board will require written quarterly reports on the progress Kittitas County is making towards compliance, commencing the first week of January 2012, and each first week in April 2012 and July 2012.⁷

As to Case No. 07-1-0015, Legal Issue No. 8 (Airport Overlay), the Board recognizes the Washington State Supreme Court's holding that the Board improperly determined the County's airport overlay zone as noncompliant with the GMA, and acknowledges the county's compliance in that issue.⁸

IV. ORDER

⁷ RCW 36.70A.300(3)(b)

⁸ *Kittitas County v. Eastern Washington Growth Management Hearings Bd.*, Slip Opinion Case No. 84187-0 pp.27 – 31 (July 28, 2011), ___Wn.2d___, 256 P.3d 1193, 1206 – 08 (2011).

1 Based on the foregoing, the parties shall brief and argue the remanded issues according to
2 the following schedule:

3 Quarterly Status Reports due	January 6, 2012 April 6, 2012 July 6, 2012
4 Compliance Due	September 12, 2012
5 Compliance Report/Statement of Actions Taken 6 to Comply and Index to Compliance Record	September 26, 2012
7 Objections to a Finding of Compliance	October 10, 2012
8 Response to Objections	October 22, 2012
9 Compliance Hearing – Telephonic Call 360 407-3780 pin 507768#	November 1, 2012 10:00 a.m.

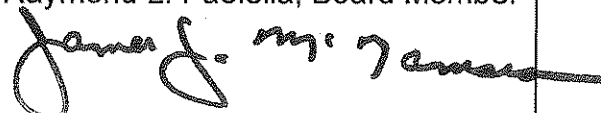
10 SO ORDERED this 7th day of November, 2011.



Joyce Mulliken, Board Member



Raymond L. Paoella, Board Member



James McNamara, Board Member

17 Note: The parties are reminded that the Board is now a section of the Environmental and Land Use Hearings
18 Office – ELUHO – with a new e-mail address eastern@eluho.wa.gov. The Board's Rules of Practice and
19 Procedure have been updated effective July 21, 2011, and are now found at Chapter 242-03 WAC.

20 Pursuant to RCW 36.70A.300 this is a final order of the Board.⁹

21 Reconsideration. Pursuant to WAC 242-03-830, you have ten (10) days from the date
22 of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for
23 reconsideration, together with any argument in support thereof, should be filed with the Board by mailing,
24 faxing, or otherwise delivering the original and three copies of the motion for reconsideration directly to the
25 Board, with a copy to all other parties of record. Filing means actual receipt of the document at the Board
office. RCW 34.05.010(6), WAC 242-03-240. The filing of a motion for reconsideration is not a prerequisite for
26 filing a petition for judicial review.

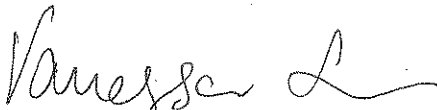
1 Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court
2 as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in
3 superior court according to the procedures specified in chapter 34.05 RCW,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

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

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Jeff Slothower
P.O. Box 1088
Ellensburg, WA 98926

Katherine L. Kenison
Lemargie Kenison Wyman and Whitaker
PO Box 965
Ephrata, WA 98823

5 DATED this 7th day of November, 2011.

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Vanessa Smith, Administrative Assistant

