

GROWTH MANAGEMENT HEARINGS BOARD

APPEALS OF SHORELINE MASTER PROGRAM COMPREHENSIVE UPDATES

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Whatcom County SMP - WWGMHB

**CITIZENS FOR RATIONAL SHORELINE PLANNING AND RONALD T. JEPSON, PETITIONERS, V.
WHATCOM COUNTY AND WASHINGTON STATE DEPARTMENT OF ECOLOGY,
RESPONDENTS, AND BUILDING INDUSTRY ASSOCIATION OF WHATCOM COUNTY,
INTERVENOR.**

Case No. 08-2-0031

Challenge filed October 2008 centered on 1.) Public participation during the period the County responded to required changes from Ecology, and 2.) The requirements of RCW 36.70A.480 regarding critical areas designation.

In this decision, the Board found that nothing in the RCW or the WAC required Whatcom County to allow for public comment/involvement on the changes recommended by Ecology once Ecology completed its review process, which was subject to public participation.

The Board found that the challenge to the County's designation of shorelines as critical areas was timely, since Ecology did not review these designations until 2008 (three years after the GMA designation of the critical areas.) However, the challengers failed to show that the SMP's adoption of the critical areas ordinance by reference violates RCW 36.70A.480(5). "The allegation that the County failed to support the shoreline critical area designations with site specific analysis is rebutted by the County's evidence that the designations were based on the presence of special status fish, wildlife and/or plant species."

WA Supreme Court: CRSP v. WHATCOM COUNTY NO. 84675-8.

Decided August 18, 2011.

CRSP alleged that Whatcom County's SMP imposed direct or indirect taxes, fees, or charges in violation of RCW 82.02.020.

Supreme Court upheld the County and Ecology: "While local jurisdictions play a role in tailoring SMPs to local conditions, the Shoreline Management Act dictates that the Department of Ecology retains control over the final contents and approval of SMPs. Therefore, SMP regulations are the product of state action and are not subject to RCW 82.02.020."

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Yakima County SMP – GMHB Eastern Region

**CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION,
PETITIONER, V. YAKIMA COUNTY AND WASHINGTON STATE DEPARTMENT OF ECOLOGY,
RESPONDENTS, AND, CENTRAL PRE-MIX CONCRETE COMPANY, INTERVENOR.**

Case No. 10-1-0011

The focus of the challenge filed May 4 2010 was:

1. The allowance for surface mining (sand and gravel) within the shoreline areas of Yakima County;
2. Failure to ensure the long-term protection of ecological resources of statewide importance along Shorelines of Statewide Significance;
3. Failure to protect shoreline vegetation through vegetative buffers; and
4. Failure to consistently designate and map shoreland areas.

The Board initially upheld Ecology’s and Yakima County’s position on issues 2 – 4, but on issue 1 found that the previous Cumulative Impacts Analysis (CIA) contained no discussion and no analysis of any kind relating to the **cumulative impacts** of mining. The Board remanded this matter to Ecology and Yakima County for the purpose of: (1) complying with the Shoreline Management Act (SMA) requirements for a comprehensive Cumulative Impacts Analysis, and (2) considering substantive SMP revisions that may be indicated by the completed Cumulative Impacts Analysis.

Yakima County:

- Produced a Supplemental Cumulative Impacts Analysis on surface mining.
- Found that no substantive SMP revisions were indicated by the SCIA.

Ecology concurred with Yakima County.

The Board found the County and Ecology had complied with SMA. Case was closed February 2011.

City of Spokane SMP – GMHB Eastern Region

JOHN R. PILCHER, AN INDIVIDUAL, AND JRP LAND, LLC., A WASHINGTON LIMITED LIABILITY CORPORATION, PETITIONERS, V. CITY OF SPOKANE, A WASHINGTON MUNICIPAL CORPORATION, AND WASHINGTON STATE DEPARTMENT OF ECOLOGY

Case No. 10-1-0012

Petitioners challenged certain amendments to the City of Spokane Shoreline Master Program including the adoption of a 200 foot wide shoreline buffer and certain Environment Designations affecting Petitioners' property.

Procedural history:

- Petitioners filed their Petition naming the City (but failing to name and serve Ecology.) They later corrected the filing to name Ecology.
- City of Spokane and Ecology filed motions to dismiss, alleging that Petitioners failed to name and serve the State of Washington Department of Ecology within the 60-day period for appeal.
- These motions were dismissed. After 14 pages of legal discussion, “the Board must conclude that identifying Ecology in the PFR as the final SMP decision maker within the 60-day appeal period, while procedurally important, is not a jurisdictional requirement.” (One Board member did dissent regarding the conclusion that service on Ecology was not jurisdictional.)

“The Board determines that the City of Spokane Shoreline Master Program Amendments, as adopted by the City of Spokane and approved by the Department of Ecology, comply with (1) the policies, goals, and provisions of the Shoreline Management Act, including RCW 90.58.020, and (2) the Shoreline Master Program Guidelines in WAC Chapter 173-26.”

The case was appealed to Superior Court. The parties have agreed to a continuance until May 2014.

(SB 5192 in 2011 shifted responsibility for publication of notice of approval to Ecology and clarified other details in the final approval process.)

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City of Kenmore – GMHB Central PS Region

**ELIZABETH MOONEY AND JANET HAYS, PETITIONERS, AND
ANN HURST, INTERVENOR, V. CITY OF KENMORE AND WASHINGTON STATE
DEPARTMENT OF ECOLOGY.**

CASE NO. 12-3-0004

The Petitioners asserted that the City’s SMP failed to enact adequate provisions to protect ecological functions of the downtown shoreline in light of a dredge report finding high levels of dioxins in sediment below a downtown waterfront property, along with other evidence of industrial contamination.

The Board found Kenmore’s SMP inventory documented existing contamination of the downtown waterways and shorelines, and Kenmore’s SMP policies, development regulations, and restoration plan provided the necessary response. The Board concluded Petitioners failed to meet their burden of providing clear and convincing evidence that Ecology’s approval of the SMP was non-compliant with the policy of RCW 90.58.020 and the applicable guidelines.

The Petition was dismissed.

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Snohomish County SMP – GMHB Central PS Region

SNOHOMISH COUNTY FARM BUREAU, PETITIONER, V.

SNOHOMISH COUNTY AND WASHINGTON STATE DEPARTMENT OF ECOLOGY.

CASE No. 12-3-0008

The restoration measures authorized by the Snohomish County’s Shoreline Master Program (SMP) include dike and levee removals that may result in inundation of prime farmlands designated as natural resource lands under RCW 36.70A.170.

The Snohomish County Farm Bureau challenge filed September 2012 asserted that the removal of dikes to restore estuarine habitat would flood designated agricultural land without complying with GMA de-designation requirements and County land use policies.

The Board found on March 14, 2014 that the Farm Bureau was not able to meet its burden of proof for non-compliance, due, in part, to the limitation on review for regulatory consistency in RCW 90.58.190(2)(b) and (c). The Petition was dismissed.

Concurring Opinion of Board Members William Roehl and Cheryl Pflug.

“We concur in the analysis and decision set forth above as it is one that we believe is dictated by the applicable SMA and GMA statutes. However, the Snohomish County Farm Bureau has raised an issue which we believe should be addressed by the departments of Commerce and Ecology and possibly by the Legislature. That issue is but one facet of the ongoing difficulty of balancing the interests and needs of agriculture with those of anadromous fisheries: **whether a local jurisdiction may allow RCW 36.70A.170 designated agricultural land to be inundated pursuant to the SMA (Chapter 90.58 RCW), resulting in loss of agricultural productivity, without first dedesignating such land.**”

Current cases:

Snohomish County SMP

Pacific Coast Shellfish Growers Association v. Snohomish County and Ecology. Case 12-3-0009. The parties are discussing settlement and have continued the hearing dates.

Spokane County SMP

Futurewise, Spokane Riverkeeper, The Lands Council and Trout Unlimited v. Spokane County and Ecology. Case 13-1-003. Hearing is November 17.