

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 CITIZENS PROTECTING CRITICAL AREAS
3 AND OLYMPIC STEWARDSHIP FOUNDATION,
4 ET AL,

Case No. 08-2-0029c

5 Petitioner,

ORDER ON
NOTICE OF INTENT TO PARTICIPATE

6
7 v.

ORDER ON
MOTION FOR *AMICUS* STATUS

8 JEFFERSON COUNTY,

9
10 Respondent.

11
12
13 This matter comes before the Board on Futurewise's Motion for *Amicus* status and Port
14 Gamble S'Klallam and Jamestown S'Klallam Tribes' Notice of Intent to Participate in
15 Compliance Hearing and Motions for *Amici* status.¹ These parties seek to support Jefferson
16 County. Petitioner Olympic Stewardship Foundation (OSF) objects to these motions.²
17

18
19 **I. BACKGROUND**

20 On November 19, 2008, the Board issued its Final Decision and Order (FDO). With the
21 FDO, the Board found that Jefferson County's adoption of Ordinance No. 03-0317-08 did
22 not comply with the Growth Management Act (GMA), RCW 36.70A, in several regards.³
23 Futurewise, the Port Gamble S'Klallam Tribe, and the Jamestown S'Klallam Tribe were
24 granted *Amici* status at the Hearing on the Merits (HOM) in support of Jefferson County as
25 to issues raised by OSF in relationship to the designation and regulation of channel
26 migration zones and buffers for non-fish bearing streams.⁴ A date of May 18, 2009 was set
27
28
29
30

31 ¹ These three motions were filed as a single document by Futurewise. The filing was received by the Board
32 on June 30, 2009.

² OSF's Objection to *Amicus* Motion and Notice of Intent to Participate, filed July 2, 2009.

³ November 19, 2008 FDO at 44-50 Findings of Fact/Conclusions of Law.

⁴ November 19, 2008 FDO, at 5.

ORDER ON MOTIONS FOR AMICUS STATUS AND INTENT TO PARTICIPATE

Case No. 08-2-0029c

July 7, 2009

Page 1 of 5

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

1 by the Board for the County to take action to bring itself into compliance with the GMA, as
2 set forth in the FDO, with a Compliance Hearing scheduled for July 15, 2009.⁵

3
4 Jefferson County timely filed its Statement of Actions Taken to Comply (SATC) and
5 Petitioners Olympic Stewardship Foundation (OSF) filed its objections.⁶ On June 30, 2009,
6 the Port Gamble S'Klallam Tribe and the Jamestown S'Klallam Tribe (collectively, the
7 Tribes) filed a Notice of Intent to Participate in the Compliance Hearing. Within this same
8 document, Futurewise and the Tribes sought *Amicus* status in the compliance proceedings.
9

10 II. DISCUSSION

11 1. Notice of Intent to Participate

12 RCW 36.70A.330(2) permits a party "with standing to challenge the legislation enacted in
13 response to the board's final order" to "participate in the [compliance] hearing." WAC 242-
14 02-89201 provides guidelines, stating that a party seeking to participate must provide
15 "written notice of intent to participate no later than two weeks prior to the compliance
16 hearing" and must abide by the established briefing schedule.
17

18
19 The Tribes assert that they participated in the public involvement process for legislation
20 enacted in response to the Board's FDO, the adoption of a new chapter of the County's
21 Critical Areas Ordinance (CAO).⁷ OSF does not dispute the Tribes participation; rather,
22 OSF contends the Tribes failed to adhere to the briefing schedule and therefore should not
23 be granted leave to participate.⁸
24

25
26 The Board's FDO established July 15, 2009 as the date for the Compliance Hearing. The
27 Tribes Notice of Intent to Participate was filed on July 1, 2009, and therefore was timely.
28

29
30 ⁵ The FDO established the following schedule for the filing of documents: June 1, 2009 Jefferson County's
31 Statement of Actions Taken to Comply; June 18, 2009 Objections to the SATC; July 6, 2009 Jefferson
32 County's Response to Objections.

⁶ Jefferson County's SATC, filed June 1, 2009. OSF's Response to Jefferson County's SATC, filed June 18,
2009.

⁷ Notice of Intent, at 1.

⁸ OSF Objections, at 5.

1 From OSF's objections, it appears that they believe the briefing schedule the Tribes were to
2 adhere to was June 1, 2009 – the day the County's SATC was due.

3
4 However, the SATC is not a brief, it is merely a jurisdiction's recitation of what it has done to
5 achieve compliance. Since the Tribes seek to support Jefferson County, the briefing
6 schedule it is required to adhere to is the same as for the County. The brief was filed on
7 July 6, 2009 and was thus timely. Contrary to OSF's objections, the Tribes not only
8 provided timely notice of their intent to participate but abided by the briefing schedule.
9

10 **Conclusion:** For the reasons noted above, Port Gamble S'Klallam Tribe and Jamestown
11 S'Klallam Tribe may participate in the compliance proceedings for this matter. The Tribes
12 participation is limited to the subject matter(s) raised during the legislative process related to
13 the newly adopted legislation.
14

15
16 2. Amicus Status

17 WAC 242-02-280 allows a person whose interest may be substantially affected by a
18 proceeding before the Board to request status as an *Amicus*. As noted *supra*, Futurewise
19 and the Tribes were granted *Amici* status at the HOM for this matter. These *Amici* parties
20 essentially seek to continue their status during these compliance proceedings and contend
21 they satisfy all of the criteria for *Amici Curiae* set forth in WAC 242-02-280.⁹ As they did
22 with the Tribes' Notice of Intent, OSF contends the request for *Amicus* status is untimely.¹⁰
23 In the alternative, OSF also contends Futurewise and the Tribes fail to satisfy the criteria for
24 *Amicus* status, including identifying the specific issues to be addressed.¹¹ Since the Tribes
25 have participation status, there is no need for the Board to address their motion for *Amici*
26 status.
27
28
29
30
31
32

⁹ Futurewise/Tribes Motion, at 2-3.

¹⁰ OSF Objections, at 2

¹¹ OSF Objections, at 3-4.

1 Unlike WAC 242-02-89201, WAC 242-02-280 does not establish a deadline by which
2 *Amicus* status may be sought except to state that the brief of the *amicus curiae* must be
3 filed no later than the time set for the filing of the brief for the party whose position the
4 *amicus* supports.¹² As noted above in the Board's discussion related to the Tribes' Notice of
5 Intent, the deadline for the *Amicus* brief was July 6, 2009, a date which was met.¹³
6

7 As for satisfying the criteria listed in WAC 242-02-280(2), the motion addresses the criteria
8 and, given their *amicus* status in the prior proceedings for this matter, Futurewise clearly
9 has familiarity with the issues and subject matter. Therefore, Futurewise is permitted to file
10 an *amicus* brief. However, Futurewise's *amicus* status is limited to the scientific and legal
11 basis for the channel migration zones as it pertains to the GMA and Jefferson County's
12 actions to achieve compliance, as set forth in the Board's November 19, 2008 FDO.
13
14

15 **Conclusion:** Futurewise's Motion for *Amicus* status is granted.
16

17 III. ORDER

18 As set forth in the Discussions sections of this order, the Board ORDERS:

- 19 1. Port Gamble S'Klallam Tribe may participate in the compliance proceedings of Case
20 No. 08-2-0029c.
- 21 2. Jamestown S'Klallam Tribe may participate in the compliance proceedings of Case No.
22 08-2-0029c.
- 23 3. Futurewise may file an *Amicus Curiae* brief in the compliance proceedings of Case No.
24 08-2-0029c.
- 25 4. The Tribes participation is limited to the subject matter(s) raised during the legislative
26 process related to the newly adopted legislation. Futurewise's *amicus* briefing is limited to
27 the scientific and legal basis for the channel migration zones as it pertains to the GMA and
28 Jefferson County's actions to achieve compliance, as set forth in the Board's November 19,
29 2008 FDO.
30

31
32 ¹² WAC 242-02-280(2)(d).

¹³ Futurewise and Port Gamble S'Klallam and Jamestown S'Klallam Tribes' Response to Olympic Stewardship
Foundation and Memorandum in Support of a Finding of Compliance was filed by electronic mail July 6, 2009.
ORDER. ON MOTIONS FOR AMICUS STATUS AND INTENT TO PARTICIPATE
Case No. 08-2-0029c
July 7, 2009
Page 4 of 5

1 5. Due to the inability of OSF to respond in writing to any assertions presented by
2 Futurewise or the Tribes which are in addition to those presented by the County in their
3 briefing, the Board will provide adequate time to OSF to address any such assertions during
4 the compliance hearing.

5 DATED this 7th day of July, 2009.

6 
7
8 William Roehl, Presiding Officer

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

1 **WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD**

2 Case No. 08-2-0029c

3 Citizens Protecting Critical Areas and Olympic Stewardship Foundation, et al
4 v. Jefferson County

5 **DECLARATION OF SERVICE**

6 I, PAULETTE YORKE, under penalty of perjury under the laws of the State of
7 Washington, declare as follows:

8 I am the Executive Assistant for the Western Washington Growth Management
9 Hearings Board. On the date indicated below a copy of an ORDER ON NOTICE OF
10 INTENT TO PARTICIPATE and ORDER ON MOTION FOR AMICUS STATUS in the
11 above-entitled case was sent to the following through the United States postal mail service:
12

13 Citizens Protecting Critical Areas
14 PO Box 1077
15 Port Hadlock, WA 98339

Gerald Steel, PE
Attorney-at-Law
7303 Young Road NW
Olympia, WA 98502

16 Olympic Stewardship Foundation
17 c/o Jim Hagen, President
18 241 Sand Road
19 Port Townsend, WA 98638

Brian T. Hodges
Pacific Legal Foundation
10940 NE 33rd Place Suite 210
Bellevue, WA 98004

20 Jim Hagen
21 150 Maple Drive
22 Port Townsend, WA 98368

William Wheeler
Fair Lea Tree Farm
PO Box 552
Quilicene, WA 98376

23 Diane Johnson
24 70 Market Street
25 Port Hadlock, WA 98339

Roger Short
1720 Center Road
Chimacum, WA 98325

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

John Richmond
PO Box 536
Forks, WA 98331

Terren MacLeod
241 Sand Road
Port Townsend, WA 98638

Mark R. Johnsen
Karr Tuttle Campbell
1201 Third Avenue Suite 2900
Seattle, WA 98101

Robert Beattey
Tim Trohimovich
Futurewise
814 Second Avenue Suite 500
Seattle, WA 98104

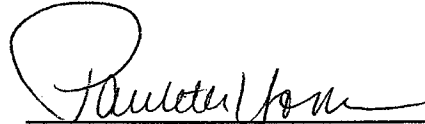
Bud Schindler
270 Rhododendron Lane
Brinnon, WA 98320

Jefferson County Auditor
1820 Jefferson Street
PO Box 563
Port Townsend, WA 98368

David Alvarez
PO Box 1220
Port Townsend, WA 98368

Lauren Rasmussen
Law Offices of Lauren Rasmussen
1904 3rd Avenue, Suite 1030
Seattle, WA 98101

DATED this 7th day of July, 2009.



Paulette Yorke, Executive Assistant

