

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

| | | |
|--------------------------------|---|--------------------------------------|
| SEATTLE AUDUBON SOCIETY, YES |) | |
| FOR SEATTLE, HERON HABITAT |) | CPSGMHB Case No. 06-3-0024 |
| HELPERS and EUGENE D. HOGLUND, |) | <i>(Seattle Audubon)</i> |
| |) | |
| Petitioners, |) | |
| |) | ORDER FINDING |
| v. |) | COMPLIANCE Re: Ordinance |
| |) | No. 122370 [Designating |
| CITY OF SEATTLE, |) | Geologically Hazardous Areas] |
| |) | |
| Respondent. |) | |
| |) | |

I. BACKGROUND

On December 11, 2006, the Board issued its Final Decision and Order (**FDO**) in this matter, as follows:

1. Petitioners failed to carry their burden of proof with respect to Legal Issue Nos. 2, 3, 4, 5, and 6, challenging the City of Seattle’s adoption of various provisions of Ordinance No. 122050 for failure to comply with RCW 36.70A.040(3); RCW 36.70A.060; RCW 36.70A.170; RCW 36.70A.172; RCW 36.70A.130; RCW 36.70A.020 (8), (9), and (10). Legal Issue Nos. 2, 3, 4, 5, and 6 are **dismissed**.
2. The City of Seattle’s adoption of Ordinance No. 122050, the Critical Areas Ordinance, was **clearly erroneous** with respect to failure to designate certain geologically hazardous areas, as set forth in this order. The Ordinance provision challenged in Legal Issue No. 1 [Section 25.09.020(A)] **does not comply** with the requirements of RCW 36.70A.040(3), .170(2), .172(1), and .130(1).
3. Therefore the Board **remands** Ordinance No. 122050 [Section 25.09.020(A)] to the City of Seattle with direction to the City to take legislative action to comply with the requirements of the GMA as set forth in this Order.
4. The Board sets the following schedule for the City’s compliance:
 - The Board establishes **April 11, 2007**, as the deadline for the City of Seattle to take appropriate legislative action.
 - By no later than **April 25, 2007**, the City of Seattle shall file with the Board an original and four copies of the legislative enactment described above, along with

a statement of how the enactment complies with this Order (**Statement of Actions Taken to Comply - SATC**). By this same date, the City shall also file a **Compliance Index**, listing the procedures (meetings, hearings etc.) occurring during the compliance period and materials (documents, reports, analysis, testimony, etc.) considered during the compliance period in taking the compliance action.

- By no later than **May 9, 2007**,¹ the Petitioners may file with the Board an original and four copies of Response to the City's SATC.
- By no later than **May 16, 2007**, the City may file with the Board a Reply to Petitioners' Response.
- Each of the pleadings listed above shall be simultaneously served on the other party to this proceeding.
- Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **May 24, 2007, at 10:00 a.m.** The hearing will be held at the Board's offices. If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. If the City of Seattle takes the required legislative action prior to the April 11, 2007, deadline set forth in this Order, the City may file a motion with the Board requesting an adjustment to this compliance schedule.

FDO, at 46-47.

On April 25, 2007, the Board received the City of Seattle's Statement of Actions Taken to Comply (**Seattle SATC**), with an attached copy of Ordinance 122370, a Supplemental Best Available Science Report for Geological Hazard Areas, a Director's Report and Recommendation dated January 2007, and a Compliance Index.

On May 9, 2007, the Board received Petitioner Eugene D. Hoglund's Response to Seattle's SATC (**Hoglund Response**), with four attachments. Petitioner Hoglund acknowledges that Ordinance 122370 adds the Seattle fault, tsunami, seiche and lahar areas to the City's hazardous areas designations, but objects that the City "leaves these geologic hazards exempt from regulation and ordinances that are applied to Seattle's other critical areas." Hoglund Response, at 2.

Mr. Hoglund moved to supplement the Compliance Index with an e-mail he sent to City Council members on April 2, 2007.

No other Petitioners responded to the SATC.

On May 16, 2007, the Board received City of Seattle's Reply to Petitioner's Response (**Seattle Reply**). The City argued that the compliance hearing must be limited to the scope of the remand in the FDO and thus must focus on designation of geologically-

¹ May 9, 2007, is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. See RCW 36.70A.330(2). The Compliance Hearing is limited to determining whether the City's remand actions comply with the Legal Issues addressed and remanded in this FDO.

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hazardous critical areas, not protection measures. The City also indicated that Petitioner's e-mail should be added to the compliance record.

On May 24, 2007, at 10:15 a.m., the Board convened the Compliance Hearing. Present for the Board were Presiding Officer Margaret Pageler, Board Member Ed McGuire, and Board Law Clerk Julie Taylor.² Seattle was represented by Eleanor Baxendale accompanied by Miles Mayhew, City planner. Petitioner Eugene Hوجلund did not appear. Court reporting services were provided by Shelley Hoyt of Byers & Anderson. The hearing was adjourned at approximately 10:45 a.m. The Board did not order a transcript of the proceedings.

II. DISCUSSION

In the 12/11/06 FDO, the Board found:

Seattle's CAO designated as geologically hazardous areas only landslide-prone areas, steep slopes, and liquefaction zones, despite the fact that Seattle's record includes competent and current science concerning other seismic hazards impinging on the City, in particular, the recently-identified Seattle fault, tsunami and seiche inundation areas, and lahar inundation areas. SMC 25.09.020(1). The Board agrees with Petitioners that the City's restricted designation of geologically hazardous areas does not comply with RCW 36.70A.170(2) and .172(1).

FDO, at 1.

The Action Taken

In response to the FDO, on April 2, 2007, after public process, the City of Seattle adopted Ordinance 122370, adding to its designated geologically-hazardous areas the following:

- The Seattle Fault zone as mapped by US Geological Survey;
- Tsunami inundation areas in the Elliot Bay area as mapped by US Survey, Washington State Department of Natural Resources, and National Oceanic and Atmospheric Administration;
- Shoreline and upland areas of Lake Washington, Elliot Bay, and Lake Union classified as at unknown risk from seiches or tsunamis; and
- Volcanic hazard areas subject to lahar risks as mapped by US Geological Survey.

Ordinance 122370, 25.09.020.A.5 and 6. The Ordinance gives the DPD Director authority to update these designations by Director's Rule if the particular map is revised by the responsible state or federal government agency. *Id.*

² Board member David Earling did not participate in this decision.
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Petitioner Høglund does not dispute the City's designations. Rather he contends that the City is required to adopt regulations protecting people and property from the identified seismic and volcanic risks. Høglund Response, at 2. In particular, he urges the Board to require the City to post tsunami warning signs on the Seattle Central Waterfront.

None of the other Petitioners submitted materials for the Compliance process.

Board Discussion

The Board finds that the City has designated areas at risk of more remote geologic hazards, as set forth in the Board's FDO in accordance with the CTED guidelines. The City has adopted various state and federal maps to designate these geologically hazardous areas, and has enacted a procedure, including public participation, allowing for the update of these maps by Director's Rule. The Board finds and concludes that the City has **complied** with the GMA and the Board's Order regarding designations of geologically hazardous areas.

RCW 36.70A.172(1) requires cities and counties, first, to designate environmentally critical areas using best available science and, then, to adopt development regulations that "protect the functions and values" of these critical areas, giving special attention to anadromous fisheries. The Board has previously noted that the GMA requirement to "protect functions and values" does not have a ready application to volcanic hazard areas (*Tahoma Audubon v. Snohomish County*, CPSGMHB Case No. 05-3-0004c, Final Decision and Order (July 12, 2005), at 23-25) or to seismic hazard areas (*Sno King v. Snohomish County*, CPSGMHB Case No. 06-3-0005, Final Decision and Order (July 24, 2006) at 15-16)

In the FDO for this matter, the Board stated:

The Board concurs with the City that additional "protection" of critical area functions and values is not yet relevant to these more remote but potentially catastrophic geological hazards. In *Sno-King*, the Board explained: "This is not to say that the use of BAS is not important in "identifying" and "designating" geologically hazardous areas; but rather its significance in "protecting" such critical areas verges on meaningless in the context of seismic areas." *Id.* at 15. The City of Seattle properly relies on provisions of its Building Code (SMC Title 22) and its emergency management system to protect people and property in the face of extreme but highly infrequent geological events.

In *Sno-King*, ... the Board stated:

The County's duty and obligation to protect the public from potential injury or damage that may occur if development is permitted in geologically hazardous areas is not rooted in the challenged GMA critical areas provisions. Rather, providing for the life safety of occupants and the

control of damage to structures and buildings is within the province of building codes.

FDO, at 19-20.

Mr. Hoglund in effect is requesting a reconsideration of the December 11, 2006 FDO. Such a request is untimely, and the Board declines to reconsider.

Conclusion

The Board finds and concludes that the City of Seattle, in adopting Ordinance No. 122370, **complies** with the GMA and the Board's Order in this matter.

III. FINDING OF COMPLIANCE

Based upon review of the December 11, 2006 Final Decision and Order, the City of Seattle SATC, Petitioner Hoglund's Response to the SATC, the Board's review of Ordinance No. 122370 and other documents in the record, the arguments and comments offered in the briefing and at the compliance hearing, the Board finds:

- By adopting Ordinance No. 122370 [geologically hazardous area designations] the City of Seattle has complied with the goals and requirements of the GMA as set forth in the aforementioned Board FDO and the GMA. The Board therefore enters a **Finding of Compliance** for the City of Seattle Re: Ordinance No. 122370 [geologically hazardous area designations].

IV. ORDER

Based upon review of the December 11, 2006 Final Decision and Order, the City of Seattle SATC, Petitioner Hoglund's Response to the SATC, the Board's review of Ordinance No. 122370 and other documents in the record, the arguments and comments offered in the briefing and at the compliance hearing, and having deliberated on the matter, the Board ORDERS:

CPSGMHB Case No. 06-3-0024, *Seattle Audubon Society, et al. v City of Seattle*, is **closed**. The City of Seattle's adoption of Ordinance No. 122370 corrects the deficiencies found in Ordinance No. 122050 and **complies** with the goals and requirements of the GMA as set forth in the Board's December 11, 2006 FDO. The Board therefore enters a **Finding of Compliance** for the City of Seattle Re: Ordinance No. 122370 [geologically hazardous area designations].

So ORDERED this 29th day of May 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order, as specified by RCW 36.70A.300, unless a party files a motion for reconsideration pursuant to WAC 242-02-832.