

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

)	
TAHOMA AUDUBON SOCIETY,)	Case No. 06-3-0001
CITIZENS FOR A HEALTHY BAY,)	
PEOPLE FOR PUGET SOUND, and)	<i>(Citizens for a Healthy Bay)</i>
FUTUREWISE,)	
)	
Petitioners,)	
)	ORDER OF CONTINUING
v.)	NONCOMPLIANCE and
)	AMENDING COMPLIANCE
THE CITY OF TACOMA,)	SCHEDULE
)	
Respondent.)	
)	

BACKGROUND

On November 1, 2007, the Board issued its Final Decision and Order (**FDO**) in this case. The Board found that the City of Tacoma Ordinance No. 27431 did not comply with the Growth Management Act. The FDO established a schedule for the City to take action to achieve compliance. The schedule allowed the City one hundred eighty days, the maximum time allowed under the statute in the absence of a finding of unusual scope or complexity. RCW 36.70A.300(3)(b).

On March 25, 2008, the Board received a Joint Stipulation and Motion for Adjustment to Compliance Schedule and a Proposed Order [**Joint Stipulation and Motion**]. The Joint Stipulation and Motion stipulated, on behalf of the Petitioners and the City, that the City has not yet complied with the FDO. The City and Petitioners set forth the progress that has been made toward compliance. The parties requested a 60-day extension of the compliance deadline so that the City can schedule an additional public hearing dealing with various amendments to the original proposed legislation. They moved that the compliance hearing set for June 5, 2008, be rescheduled to August 5, 2008.

On March 27, 2008, the Board issued its Order Expediting Compliance Hearing on Stipulation of Continuing Noncompliance, setting a telephonic compliance hearing for April

9, 2008, at 10:00 a.m. The purpose of the expedited hearing was to comply with RCW 36.70A.330(2) which requires a compliance hearing prior to an order finding continuing noncompliance and establishing a new schedule.

The Compliance Hearing was held by telephonic conference call on April 9, 2008, at 10:15 a.m., Board member Margaret Pageler presiding. Also present for the Board was Board member Edward G. McGuire. Keith Scully represented Petitioners and Jay Derr of GordonDerrLLP represented Respondent. The hearing was adjourned at 10:25 a.m.

DISCUSSION

The Petitioners and Respondent stipulate that the City is making good progress toward compliance with the Board's FDO in this case. At the compliance hearing, the City stated that Planning Commission review of proposed legislation had generated public comment that resulted in a number of changes to the original proposal, so that an additional Planning Commission public hearing was recommended prior to final City Council action. The City, recognizing it could not complete the process with full public involvement within the time allowed in the FDO, stipulates to continuing noncompliance and requests a 60-day extension of the compliance schedule. The City has scheduled an additional Planning Commission hearing in April, deliberation and recommendation in May, and final action by the City Council by June 24, 2008.

Petitioners concur with the City's request.

RCW 36.70A.300(3)(b) provides that the Board's final decision and order "shall specify a reasonable time not in excess of one hundred eighty days ... within which the [city] shall comply with the requirements of this chapter." RCW 36.70A.330(2) states: "The board shall conduct a hearing and issue a finding of compliance or noncompliance with the requirements of this chapter and with any compliance schedule established by the board in its final order."

The FDO in this matter allowed the full one hundred eighty days for compliance. The compliance period has not yet expired, and the Joint Stipulation and Motion acknowledges that the Board must find continuing noncompliance in connection with setting a new compliance schedule. The Board therefore issues an order finding continuing noncompliance and establishing a second compliance schedule.

ORDER

Based upon the representations of the parties at the compliance hearing, the Joint Stipulation

and Motion, the GMA, prior Board orders and case law, and having deliberated on the matter, the Board ORDERS:

1. The Board finds and concludes, pursuant to the stipulation of the parties, that the City of Tacoma will not take legislative action to comply with the GMA as set forth in the Board's Final Decision and Order in this case within the time for compliance set in the FDO. Therefore the Board enters an **order of continuing noncompliance**.

2. The Board establishes an extended schedule for compliance as set forth below:
 - The Board establishes **July 1, 2008**, as the deadline for the City of Tacoma to take appropriate legislative action to achieve compliance with the goals and requirements of the GMA as interpreted and set forth in the FDO.
 - By no later than **July 14, 2008**, the City shall file with the Board an original and four copies of the legislative enactments described above, along with a statement of how the enactment complies with the FDO (**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 **July 23, 2008**,¹ the Petitioners may file with the Board an original and four copies of Response to the City's SATC.
 - By no later than **July 30, 2008**, 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 **August 7, 2008, at 10:00 a.m.** at the Board's offices. If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically.

So ORDERED this 9th day of April, 2008.

¹ July 23, 2008, 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 the FDO.

06301 CHB, et al v. Tacoma (April 9, 2008)

**06-3-0001 Order of Continuing Noncompliance
and Amending Compliance Schedule**

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member