

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

CITY OF ANACORTES, et al.,

Petitioners,

No. 00-2-0049c

v.

**COMPLIANCE
AND LIFTING OF
INVALIDITY
ORDER
(C/I Development
Issues)**

SKAGIT COUNTY,

Respondent,

and

JOSH WILSON PROPERTIES, et al.,

Intervenors.

In the February 6, 2001 Final Decision and order (FDO) we told the County to do the following in order to comply with the Growth Management Act (GMA, Act):

“In order to comply with the Act the County must take the following actions by the deadlines specified:

- (1) Within 180 days, CP and DRs must be consistent with the clear statement in CP at 4-1 that new growth will be encouraged within the UGAs and inappropriate conversion of undeveloped land will be reduced.
- (2) Review the challenged RFS designations and eliminate all those areas which do not comply with the interpretation of .070(5)(d) included in this FDO. If compliance is not achieved within 90 days, we will consider Petitioners’ request for invalidity.
- (3) Within 30 days, repeal all RMI designations and return those sites to their previous designations. Conduct a full SEPA analysis and public participation process before reinstating a RMI

designation. Also conduct SEPA analysis to determine the appropriateness of the RMI designation for the proposed sites. As to the Culbertson site, analysis must include the appropriateness of including the site in the Anacortes UGA. If compliance is not achieved within 30 days, FOOSC's request for invalidity will be considered.

- (4) Within 30 days, repeal the 2000 amendments to the CPPs. If the County wishes to amend its CPPs, it must return to the CPP Committee negotiation table and work out with its municipal members mutually agreeable amendments. The process must conform to the 1992 Framework Agreement and proper SEPA procedures must be followed.
- (5) We declare invalid the 410 acres of allotted rural C/I that have not been specifically designated through Ordinance #17938. Skagit County must make no further CP amendments adding to rural C/I, beyond that already specifically designated, until it implements its CP amendment process discussed in Chapter 2 of the 1997 CP. This must include implementing the Monitoring Plan effectiveness and the Growth Management Indicators provision of 1997 CP 2-11 through 2-13.
- (6) Any findings of noncompliance in previous sections of the FDO are incorporated by reference.”

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In the January 31, 2002 Compliance Order (CO), we found the County in compliance as to all challenged Rural Freeway Service (RFS) designations except the southeast quadrant of the Bow Hill Road RFS. The County remained in noncompliance as to remands (1), (3), (4) and (5) above. The County remained in invalidity as to Remand (5), the 410 acres of allotted rural C/I that had not been specifically designated through Ordinance #17938.

After a March 27, 2002 order of reconsideration and two orders extending the compliance report date, on May 8, 2003, Skagit County filed its update on actions taken to comply. On page 1 of the update, the County pointed out that it had appealed both the FDO and CO as to Remands (3), (4) and (5) in this case to Skagit County Superior Court. However, the County did not pursue these appeals, but instead, sought a resolution of the remaining remand issues through settlement negotiations and adoption of new regulations.

Remand Issue (3) Rural Marine Industrial (RMI)

The County reported that a settlement had been reached that the County would adopt substantial revisions to the RMI zone, limiting both the potential growth boundaries and the intensity of development allowed within the RMI designation. The BOCC adopted the amendments on May 6, 2003. The purpose of the revisions was to ensure that the uses and activities allowed on parcels zoned RMI are rural in nature. Further restrictions were placed on parcels over 30 acres in size designated RMI. This mainly applies to the Culbertson property RMI, which we had found allowed urban development and should be made part of the Anacortes UGA if these urban uses and intensities were to be allowed. The effect of many provisions added in the amendment is to substantially limit development on the Culbertson RMI property, particularly in the shoreline area. In addition, Culbertson is pursuing a comprehensive plan amendment to add its Upland property to the City of Anacortes' UGA and to designate that property Light Manufacturing.

None of the parties contested the compliance of the County's actions to bring itself into compliance as to the RMI remand concerns. **After independently reviewing the County's actions taken to comply, we find the County in compliance and commend the County for its much-improved RMI provisions. We also commend the County for working with the other parties to bring itself into compliance**

Remand Issue (4) Framework Agreement and 2000 CPP Amendments

On November 26, 2002, the County signed a new Framework Agreement with the various cities and the Town of LaConner. Through a Stipulation and Order entered in superior court, the Cities of Anacortes, Mount Vernon and Burlington have agreed to the entry of an order by this Board finding the 2000 CPP amendments in compliance with the GMA. The County requested that we issue such an order.

We admit the County's proposed exhibits 1102, 1103 and 1104 to the record. Those exhibits are relevant to this issue.

No one has opposed a finding of compliance on this remand issue. **After independently reviewing the County's actions taken to comply, we find the County in compliance as to Remand Issue (4).**

Remand Issue (5) 410 Unallocated Acres of Rural C/I.

On April 10, 2003, the Skagit County Planning Commission conducted a public hearing on a proposal to delete reference in the CP to the 410 acres of unallocated Rural C/I we found invalid in the February 6, 2001 FDO. On April 15, 2003, the Planning Commission recommended approval of that proposal. On May 6, 2003, the Board of County Commissioners voted to accept the planning commission's recommendation to repeal reference to those 410 acres in the CP in the near future. The County has subsequently taken that action. The County asks that, in light of that action, we rescind the invalidity finding and find the County in compliance as to this remand issue. None of the other parties contested the lifting of invalidity or a finding of compliance as to Remand Issue (5). **After independently reviewing the County's actions taken, we find that the County's action in response to the determination of invalidity no longer substantially interferes with the fulfillment of the goals of**

the Act. We rescind the previous finding of invalidity and find the County in compliance as to Remand Issue (5).

Remand Issue (2) Rural Freeway Service (RFS)

In the January 31, 2002 Compliance Order, we found all of the County's RFS designations in compliance except the one at the southeast quadrant of Bow Hill Road and I-5 (CO at 12-30). On April 29, 2002, the County adopted Interim Ordinance No. R20020137, repealing the RFS designation of the southeast quadrant of Bow Hill Road and I-5 (Ex. 296). This CP amendment was made permanent through Ordinance No. 02020002 on September 3, 2002 (Ex. 877).

None of the other parties contested a finding of compliance on this issue. **After independently reviewing the County's action taken, we find the County in compliance as to Remand Issue (2).**

Remand Issue (1) Encourage New Growth Within UGAs and Reduce Inappropriate Conversion of Undeveloped Land.

In the February 6, 2001, FDO, we stated:

One of Petitioners' greatest concerns is centered around the County's implementation of the first two GMA planning goals. These are restated at p. 4-1 of the land use element of the County's comprehensive plan (CP):

"The development of this chapter was guided in particular by the following GMA Planning Goals:

- Encourage urban development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner
- Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development..."

In order to comply with the Act, the County must implement this intent. The CP and development regulations (DRs) must reflect this clear statement that new growth will be encouraged within the urban growth areas (UGAs). With the County's decision to add new C/I allocation in the rural areas and amend its CP to add tough Boundary Review Board (BRB) annexation requirements for lands inside municipal UGAs, we find no such incentive. This underlying flaw will be discussed under several of the topics below. We reiterate that within municipal UGAs annexation must be appropriately planned and must occur.

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In its update of actions taken to comply, the County stated that it believes it is in compliance on this remand issue. If for any reason we find the County in continued noncompliance, the dilemma of encouraging new growth within the UGAs is already before us in case No. 00-2-0050c and should be resolved in that case. (Case No. 00-2-0050c was consolidated under 03-2-0013c on June 30, 2003.)

The City of Anacortes was the only party that contested a finding of compliance on this remand issue. In its May 27, 2003 brief opposing a finding of compliance, Anacortes states that this remand issue is more than an "umbrella issue" encompassing the County's need to remove inappropriate rural C/I development enumerated in the other remand issues. To comply with Issue (1), the County must also take a set of affirmative actions to encourage development within UGAs. The City also opposes the County's proposal to drop this issue from this case and attempt to resolve it in case No. 00-2-0050c. It asserts that not only is transformance of governance to be achieved in the UGAs as set forth in case No. 00-2-0050c, but the County in this case is to set forth a set of positive incentives to achieve transformance of governance and provide incentives to further GMA's anti-sprawl goals.

The County responded that it has brought its legislation into compliance as to the other remand issues in this case which were considered to discourage new growth within UGAs. It has also amended its CP Policy 7A-4.2(a), which we had described in the

FDO as “tough Boundary Review Board annexation requirements for lands inside municipal UGAs.” In its response brief, the County stated:

Anacortes claims that compliance on this issue involves “more than addressing the other issues in this case.” The County has addressed all of the specific issues enumerated by the Board. The County does not know how else to achieve compliance. Anacortes also asserts that the County must take “a set of affirmative actions,” but fails to point to where this Board required any such additional affirmative actions (other than what the County has already taken) or to explain exactly what other affirmative actions the County must take to achieve compliance.

We agree with the County that the purpose of this case was to deal with commercial/industrial development allowed outside of urban growth areas. In earlier sections of this decision, we have found compliance as to all remaining issues pertaining to C/I development outside UGAs. Anacortes’ remaining challenge deals with positive incentives needed to encourage C/I development within UGAs.

Also, Anacortes’ complaint that the County still has not achieved transformance of governance within the municipal UGAs and that the County has only signed one new interlocal agreement with a city are remaining issues in case No. 00-2-0050c (City Regulations Issues). It seems logical to deal with these remaining concerns under case No. 00-2-0050c since that case deals specifically with how development will occur within UGAs.

No one challenged the County’s compliance as to the first part of this remand issue: Remove C/I provisions which allow inappropriate conversion of undeveloped land outside UGAs. **After independent review of the record and finding compliance as to the remaining Rural Freeway Service and Rural Marine Industrial Provisions, and the 410 unallocated acres of Rural C/I, we find the County in compliance as to the remand requirement to preclude inappropriate C/I development outside UGAs.**

We agree with the County that the County's challenge of encouraging new growth within UGAs is already an issue in case No. 00-2-0050c and should be resolved under that case. If the City of Anacortes wishes to further pursue its arguments that the County must adopt a set of affirmative actions to further the GMA's goal of encouraging urban growth within urban growth areas, it may do so at the upcoming hearing in case No. 00-2-0050c, now consolidated into case No. 03-2-0013c.

So Ordered this 25th day of July, 2003.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan Henriksen, Board Member

Margery Hite, Board Member

Holly Gadbow, Board Member