CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

ROBISON, et al.,	)	**Consolidated**
Petitioners,	)	**Case No. 94-3-0025**
v.	)	**FINDING OF COMPLIANCE**
CITY OF BAINBRIDGE ISLAND,	)	
Respondent.	)	
	)	
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I.Procedural Background

On May 3, 1995, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued a Final Decision and Order (the **Order**) in the above referenced case.The Order remanded the City of Bainbridge Island's (the **City)** comprehensive plan (the **Plan**) with directions to the City to make three modifications to the Plan, in order to bring it into compliance with the Growth Management Act.

The City was directed to comply with the Board's Order not later than November 3, 1995, and to file a statement regarding compliance with the Board not later than November 10, 1995.
On November 8, 1995, the Board received copies of the City's "Comprehensive Plan Amendment in response to the Growth Management Hearings Board," and Ordinance 95-41 adopting that amendment.The Ordinance was passed by the City Council on November 2, 1995 and approved by the Mayor on November 3, 1995.
On November 15, 1995, the Board issued a Notice of Compliance Hearing, setting the hearing for December 1, 1995.
On December 1, 1995, the Board held a compliance hearing at its office, at 2329 One Union Square, Seattle.Chris Smith Towne, presiding officer, appeared for the Board.Harry E. Grant, appearing for the City, and Petitioners Merrill Robison, Philip C. Whitener and James C. Tracy, representing themselves, participated telephonically.Court reporting services were provided by Robert H. Lewis of Robert H. Lewis & Associates, Tacoma.

II.STATEMENT OF FACTS

The following portions of the Board's Order are the subject of this compliance determination:
1.The population allocation used for the Plan was remanded, with instructions to incorporate either Kitsap County's May 1994 allocation or, if the County made a later allocation, to incorporate the latter number, as required by RCW 36.70A.130(3).
2.The Capital Facilities Element of the Plan was remanded, and the City was directed to provide further localized analysis of the public facilities infrastructure required to support the growth planned for the Winslow urban core, as required by RCW 36.70A.070(3)(b) and (c).
3.The City was directed to amend the Plan's "Overriding Principle #1" by removing the word "rural."

III.DISCUSSION

Petitioners participating in the compliance hearing did not object to the City's actions taken to comply with the first and third requirements of the Board's Order.However, they objected to the actions taken to comply with the second requirement, to provide further localized analysis of capital facilities for the Winslow core.Tracy asserted that the Act requires the City to demonstrate in its Capital Facilities Element that it can provide the services required by the growth directed to Winslow.Robison charged the City with failing to establish minimum facilities standards for Winslow.Whitener stated that the City should enlarge the Winslow core boundaries to coincide with the sewer district's boundaries.

In response, the City stated that it was required to provide more localized analysis for the Winslow urban core, and it has done so; the other issues raised by petitioners are not relevant to a compliance inquiry.

The Board has previously considered and ruled on the scope of its consideration of an action taken to comply with a Board order, in its Finding of Compliance in *West Seattle Defense Fund*, CPSGMHB Case No. 94-3-0016 (1995), at 5:

> When a local jurisdiction takes an action to comply with the Act's requirements, but a petition for review is filed challenging that action as failing to comply with the GMA, and the Board issues a final decision and order concluding that the action indeed failed to comply with the Act, and orders the jurisdiction to take subsequent action that will require an amendment(s) to the document enacted by a specified deadline, then the scope of the compliance hearing will be limited.The scope of such hearing will be limited to whether the subsequent action was taken by the compliance deadline ...

...

> Of particular importance is the fact that in a failure to comply case where the Board's remand requires an amendment to the adopted comprehensive plan or development regulation, the amendment action is presumed valid (*see* RCW 36.70A.320) and, by determining substantive compliance at the compliance hearing rather than at a hearing on

the merits of a new petition for review, persons other than those parties in the underlying case would not have the opportunity to substantively challenge the amended document.By requiring a new petition for review to be filed when a comprehensive plan or development regulation has been amended, the Board is providing the opportunity for full public participation by all citizens, not just the parties in the original case.

Having applied the above-cited ruling to this matter, the Board **holds that its review and order will be limited to whether the City procedurally complied with the Board's Final Decision and Order.**

IV.ORDER

Having considered the documents filed by the City in support of a finding of compliance, and the arguments presented at the hearing by the City and certain petitioners, the Board concludes that the City **has complied** with the Board's Order.Therefore, the Board issues a **finding of compliance** to the City.

In the event a potential petitioner concludes that the City's action taken to comply with the Board's Order, and found by this order to be in procedural compliance, fails to substantively comply with the Act, that person will be able to file a new petition for review challenging the City's action within sixty days of publication of the ordinance in question.

So ORDERED this 11th day of December, 1995.
CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Chris Smith Towne
Board Member

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Joseph W. Tovar, AICP
Board Member