

A) A finding of compliance with the GMA and the FDO with respect to items 5A, 5B, and 5C.

B) A finding of non-compliance with the GMA and the FDO with respect to item 5D, specifically Policy CF-62 (1)(d) and (7)(d). The Board concludes that before considering invalidation or a recommendation of sanctions, it is appropriate to first provide the City with the option of remedying the noncompliant provisions. For example, replacing the word “incentive” with the words “mitigating measures” in subparagraph (7)(d) would provide a remedy to this finding of noncompliance. In the alternative, the City could simply delete CF-62(7)(d). The only remedy available with regard to subparagraph (1)(d) is its deletion.

C) A second compliance hearing is scheduled for May 28, 1997.

On February 21, 1997, the Board received “Petitioner BNSF’s Motion to Clarify the Board’s Order.”

On March 7, 1997, the Board issued an “Order Denying Motion to Clarify.”

On May 7, 1997, the Board received a cover letter from counsel for the City of Auburn and two pleadings: a “Compliance Status Report of the City of Auburn” and “Notice of Substitution and Withdrawal of Outside Counsel for the City of Auburn.”

On May 12, 1997, the Board issued an “Order Amending Briefing Schedule and Date for Second Compliance Hearing” which established June 26, 1997 as the date for the Second Compliance Hearing.

On June 6, 1997, the Board issued a “Second Order Amending Briefing Schedule and Date for Second Compliance Hearing” which established July 11, 1997 as the date for the Second Compliance Hearing.

On June 20, 1997, the Board received “BNSF’s Motion Requesting Substantive Compliance Hearing” (**BNSF’s Motion for Substantive Compliance Hearing**).

On June 24, 1997, the Board received the “Second Compliance Status Report of the City of Auburn” which included as an attachment Ordinance No. 4980.

On July 2, 1997, the Board received “BNSF’s Reply to Auburn’s Response Regarding Substantive Compliance Hearing.”

A telephonic compliance hearing was held at 10:00 a.m. on Friday, July 11, 1997 at the Board’s

offices at 2329 One Union Square, 600 University St., Seattle, WA. Two Board members were present: Joseph W. Tovar, presiding; and Chris Smith Towne. Eric Laschever was present representing BNSF; and Peter Eglick representing the City, participated telephonically for the first part of the hearing, but was present for the latter part. The presiding officer announced that BNSF's Motion for Substantive Compliance Hearing was denied.

II. FINDINGS OF FACT

1. On June 16, 1997 the City of Auburn enacted City of Auburn Ordinance 4980, "An Ordinance Of The City Council Of The City of Auburn, Washington, Relating To Planning; Adopting Comprehensive Plan Text Amendments To Comply With The Central Puget Sound Growth Management Hearings Board Order In Case No. 95-3-0075c, Dated February 13, 1997, Pursuant To The Provisions Of R.C.W.36.70A And 35A.63 Of The Laws Of The State Of Washington; Designating These Amendments As Guidelines For Exercising The City's Authority Under The Washington State Environmental Policy Act (SEPA); Directing That This Ordinance And Comprehensive Plan Amendments It Adopts And Approves Be Filed With The Auburn City Clerk And Be Available For Public Inspection." City of Auburn Ordinance 4980, at 1.
2. City of Auburn Ordinance No. 4980 amended Policy CF-62 by deleting subparagraph (1) (d). *See also* Exhibit A to Ordinance 4980, at 1.
3. City of Auburn Ordinance No. 4980 amended Policy CF-62 by replacing the word "incentives" with the words "mitigating measures" in subparagraph (7)(d). *See also* Exhibit A to Ordinance 4980, at 2.

III. discussion

The single issue in this case is whether the City of Auburn remedied Policy CF-62 subsections (1) (d) and (7)(d) which were found non-compliant in the Board's FDO on May 10, 1996 and the Board's Finding of Non-Compliance and Notice of Second Compliance Hearing on February 13, 1997.

Ordinance 4980 made two amendments to Policy CF-62: (1) deleting subparagraph (1)(d), and (2) replacing the word "incentives" with the words "mitigating measures" in subparagraph (7) (d). *See* First and Second Exhibits attached to "Second Compliance Status Report of the City of Auburn." By amending Policy CF-62 in the manner described above, the City has complied with the Board's Order. **Therefore, the Board holds that the City of Auburn's Policy CF-62, subsections (1)(d) and (7)(d) is compliant with the GMA.**

Not at issue in this case is whether the City substantively complied with RCW 36.70A.140. Under 36.70A.330(1), the Board “shall set a hearing for the purpose of determining whether the state, agency, county, or city is in compliance with the requirements of this chapter.” Although some flexibility is afforded the Board, the Board’s general rule has been to only address compliance issues, and not substantive issues at compliance hearings. In those cases where the Board intends to address substantive compliance, it will explicitly so state in its notice of compliance hearing. *See Vashon-Maury, et al. v. King County*, CPSGMHB Case No. 95-3-0008, Finding of Compliance, page 9 (May 24, 1996). The Board did not do so in this case.

IV. RULING ON BNSF’S MOTION FOR SUBSTANTIVE COMPLIANCE HEARING

BNSF’s Motion for Substantive Compliance Hearing is **denied**.

V. FINDING OF COMPLIANCE

The Board, having reviewed its Final Decision and Order, Finding of Non-Compliance, the file in this case and the above referenced documents, and having considered the arguments of the parties, concludes that the City **has complied** with the Board's Final Decision and Order.

Therefore, the Board issues a Finding of Compliance to the City in this case.

So ORDERED this 24th day of July, 1997.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member