

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

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| PORT OF SEATTLE,    | ) | <b>Case No. 97-3-0014</b>           |
| Petitioner,         | ) | <b>RESCISSION OF INVALIDITY and</b> |
| v.                  | ) | <b>FINDING OF COMPLIANCE</b>        |
| CITY OF DES MOINES, | ) |                                     |
| Respondent.         | ) |                                     |
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**I. procedural background**

On August 13, 1997, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued a Final Decision and Order (the **FDO**) in this case. The FDO provided that:

the Des Moines Comprehensive Plan is **not in compliance** with RCW 36.70A.200. Because policies 1-04-05 and 5-04-04 purport to preclude the expansion of an essential public facility, namely, Seattle Tacoma International Airport, and such preclusion would substantially interfere with the fulfillment of RCW 36.70A.020(3), these policies are **invalid**.

The Plan is remanded to the City and it is instructed to bring the Plan into compliance with RCW 36.70A.200 by no later than **Monday, December 15, 1997**, in order to achieve compliance with this Order and the GMA. In amending the plan to address the invalidated policies, the City will, pursuant to the Act, be required to maintain internal plan consistency. Thus, other related policies may need to be amended.

The City is further instructed to file with the Board, and provide a copy to both the Port and Amicus PSRC, a Statement of Actions Taken to Comply, by no later than **4:30 p.m. on Monday, December 29, 1997**. The Board will then promptly schedule a compliance hearing.

FDO at 13 (emphasis in original).

On March 17 and May 14, 1998, the Board held a compliance hearing in this case.

On May 26, 1998, the Board issued its "Order Finding Noncompliance and Invalidity, and Recommending Contingent Sanctions" (the **Order Finding Noncompliance**). The Order Finding Noncompliance provided that:

Des Moines' comprehensive plan **does not comply** with the requirements of RCW 36.70A.200. Noncomplying Plan policies 1-04-05 and 5-04-04 **remain invalid**. Noncomplying Plan policies 1-04-04, 6-04-09, 8-04-01, and 8-04-02 are determined to be **invalid**.

Des Moines' comprehensive plan is **remanded** to the City with instructions to:

1. Repeal or amend the invalidated Plan policies so as to remove their substantial interference with the fulfillment of the GMA's transportation goal, RCW 36.70A.020(3), and bring them into compliance with RCW 36.70A.200.
2. Fulfill its duty to amend its Plan by repealing or amending any Plan policies that direct Des Moines to preclude the siting of essential public facilities as prohibited by RCW 36.70A.200.
3. Achieve or maintain internal Plan consistency as required by RCW 36.70A.070(preamble).

Des Moines shall bring its Plan into compliance with RCW 36.70A.200 and RCW 36.70A.070(preamble), consistent with this Order Finding Noncompliance and Invalidity, and Recommending Contingent Sanctions, by no later than **Wednesday, September 16, 1998**.

The City is further instructed to file with the Board, and provide copies to the Port and amicus curiae Puget Sound Regional Council, four copies of a Statement of Actions Taken to Comply, by no later than 4:00 p.m. on **Wednesday, September 23, 1998**. The briefing and hearing schedule shall be pursuant to the schedule below.

Order Finding Noncompliance at 7-8 (emphasis in original).

On September 15, 1998, the Board received from the City a letter requesting modification of the compliance schedule.

On September 16, 1998, the Board received from the City a letter confirming a telephone conversation with Presiding Officer Tovar regarding the City's request for extension of the compliance date.

On September 18, 1998, the Board issued its "Order Granting Des Moines' Motion to Modify Compliance Schedule."

On October 20, 1998, the Board received the City's "Statement of Actions to Comply with the

Board's May 26, 1998 Order Finding Noncompliance . . ." (**Statement of Actions**). This Statement of Actions set forth the actions taken by the City to comply with the Board's orders in this case.

On October 21, 1998, the Board received from the City a proposed "Stipulation and Order of Dismissal" signed by the representatives of the City and the Port of Seattle.

On November 6, 1998, the Board issued its "Order Changing Compliance Hearing Schedule," setting a compliance hearing for December 17, 1998.

On December 10, 1998, the Board received from the City a compliance index and red-line/strike-out versions of the Ordinance adopted in response to the Board's Order Finding Noncompliance.

On December 17, 1998, at 10:00 a.m., the Board held a telephonic compliance hearing. Present for the Board were Board members Joseph W. Tovar, Edward G. McGuire, and Chris Smith Towne. John W. Hempelmann and Kevin M. Raymond represented the City of Des Moines. J. Tayloe Washburn represented the Port of Seattle. Jennifer A. Dold represented amicus curiae Puget Sound Regional Council.

## **II. FINDINGS OF FACT**

1. On October 8, 1998, the Des Moines City Council adopted Ordinance No. 1220, amending the City's Comprehensive Plan (the **Plan**). This ordinance amended Plan policies 1-04-04, 1-04-05, 4-04-01, 5-02-08, 5-03-02, 5-04-04, 6-03-23, 6-04-09, 8-03-01, 8-03-02, 8-03-03, 8-03-04, 8-04-01, 8-04-02, and 8-04-03. Statement of Actions, Attachment (Ordinance No. 1220).

2. All Plan policies found by the Board to be noncompliant were amended by Ordinance No. 1220. All Plan policies determined by the Board to be invalid were amended by Ordinance No. 1220. Statement of Actions, Attachment (Ordinance No. 1220).

## **III. conclusions of law**

1. By adopting Ordinance No. 1220, the City amended the Plan policies determined by the Board to be invalid. The amended Plan policies no longer substantially interfere with the fulfillment of the goals of the GMA.

2. By adopting Ordinance No. 1220, the City amended the Plan policies found by the Board to be noncompliant. The amended Plan policies comply with the requirements of the GMA as set forth in the Board's orders in this case.

Any findings of fact that should be conclusions of law, but have been improperly indicated, are deemed conclusions of law; likewise, any conclusions of law that should be findings of fact, but

have been improperly indicated, are deemed to be findings of fact.

#### **IV. FINDING OF COMPLIANCE**

The Board, having reviewed its Final Decision and Order, its Order Finding Noncompliance, and the file in this case, and having reviewed the above referenced documents, concludes that the City of Des Moines **has complied** with the Board's Final Decision and Order and Order Finding Noncompliance.

Therefore, the Board **rescinds its determination of invalidity** and issues a **Finding of Compliance** to the City in this case. The Board will forward a copy of this Order to the Governor with a cover letter that also rescinds the prior contingent recommendation of sanctions.

So ORDERED this 5th day of January, 1999.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Board Member

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Joseph W. Tovar, AICP  
Board Member

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Chris Smith Towne  
Board Member

NOTICE: This is a final order for purposes of appeal. Pursuant to WAC 242-02-832, a Motion for Reconsideration may be filed within ten days of service of this final order.