

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

RICHARD L. GRUBB,)	Case No. 00-3-0004
)	
Petitioner,)	ORDER FINDING CONTINUED
)	NONCOMPLIANCE AND
v.)	INVALIDITY, DENYING MOTION
)	TO EXTEND AND PROVIDING
CITY OF REDMOND,)	NOTICE OF SECOND
)	COMPLIANCE HEARING
Respondent,)	
)	
and)	
)	
LAKE WASHINGTON YOUTH)	
SOCCER ASSOCIATION,)	
)	
Intervenor.)	
_____)	

I. PROCEDURAL HISTORY

On August 11, 2000, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued its Final Decision and Order (**FDO**) in CPSGMHB Case No. 00-3-0004, *Grubb v. City of Redmond*. The Board found that the City of Redmond (**Redmond** or the **City**) was not in compliance with the goals and requirements of the GMA and entered a determination of invalidity as to Ordinance No. 2050’s application to the Benaroya and Muller parcels. The FDO, at Section VII, provides:

Having reviewed and considered the above-referenced documents, having considered the arguments of the parties, and having deliberated on the matter, the Board orders:

- City of Redmond Ordinance 2050 is in compliance with the goals and requirements of the Growth Management Act, except for the Urban Recreation land use designation and the associated “UR” zoning designation assigned to the Benaroya and Muller parcels in the North Sammamish Valley area.

- The Board finds that the City’s action de-designating the Benaroya and Muller parcels from “agricultural” and designating it “urban recreation” was **clearly erroneous**.
- The Board has determined that the continued validity of the “Urban Recreation” land use designation and zoning for the Benaroya and Muller parcels would substantially interfere with the fulfillment of RCW 36.70A.020(8). Pursuant to RCW 36.70A.300(1)(b), the Board enters a **determination of invalidity** as to the part of Ordinance 2050 which designates the Benaroya and Muller parcels for urban recreation.
- The Board **remands** Ordinance 2050 with direction to the City to take the necessary legislative actions to comply with the GMA as set forth and interpreted by this Final Decision and Order by no later than **4:00 p.m. on January 10, 2001**.
- By no later than **4:00 p.m. on January 17, 2001**, the City shall file with the Board an original and four copies of a Statement of Actions Taken to Comply with this Final Decision and Order (the **SATC**) and shall simultaneously serve a copy on Petitioner.
- By no later than **4:00 p.m. on January 24, 2001**, or seven calendar days after the City submits its SATC, whichever comes first, the Petitioner may file with the Board an original and four copies of its Memorandum in Response to the SATC, and shall simultaneously serve a copy on the City.

Pursuant to RCW 36.70A.330(1), the Board gives Notice of Compliance Hearing in this matter to be held at **10 a.m. on February 1, 2001** in Room 1022 of the Financial Center, 1215 Fourth Avenue, Seattle. . . .

FDO, at 17.

On January 10, 2001, the Board received “City of Redmond’s Statement of Actions Taken in Response to Board’s Final Decision and Order and Motion for Extension of Compliance Deadline.” (the **City Statement of Actions**). The City Statement of Actions had 9 exhibits attached.

On January 22, 2001, the Board received Lake Washington Youth Soccer Association’s (**LWYSA**) “Motion to Intervene.”

On January 23, 2001, the Board issued an “Order Granting Lake Washington Youth Soccer Association’s Motion to Intervene.” The Order allowed LWYSA to respond to the City Statement of Actions; and it allowed Petitioner to reply to LWYSA response. The date of the

compliance hearing remained the same as set forth in the FDO.

On January 24, 2001, the Board received “Petitioner’s Response to City of Redmond’s Compliance Brief and Motion for Extension of Compliance Deadline.” (**Petitioner’s Response**). Petitioner’s Response attached 3 exhibits.

On January 26, 2001, the Board received “Lake Washington Youth Soccer Association’s Response to the City of Redmond’s Statement RE Compliance.” (**LWYSA Response**). On January 30, 2001, the Board received Petitioner’s “Reply to Lake Washington Youth Soccer Association’s Brief upon Intervention.” (**Petitioner’s Reply**).

On February 1, 2001, beginning at 10:00 a.m., the Board held a compliance hearing in this matter in Suite 1022 of the Financial Center, 1215 Fourth Avenue, Seattle, Washington. Present for the Board were members Edward G. McGuire, Joseph W. Tovar, and Lois H. North, presiding officer. Also present for the Board was legal intern Brian Norkus. Petitioner Richard L. Grubb represented himself. Representing the City of Redmond was James E. Haney. Representing Intervenor Lake Washington Youth Soccer Association was Glenn J. Amster. Court Reporting services were provided by Duane Lodell of Robert Lewis & Associates, Tacoma, Washington. No witnesses testified. After hearing argument from the parties, the presiding officer directed the City to submit for the Board’s use additional copies of a number of items from the record, including the City’s comprehensive plan, zoning and development regulations in effect prior to and after 1995. Following the compliance hearing, the Board ordered a transcript of the proceedings (the **Transcript**).

On February 15, 2001, the Board received from the City the following: the current City of Redmond comprehensive plan, the 1995 Existing Land Use Map, the 1999 Existing Land Use Map, the City of Redmond Zoning Map, the City of Redmond Comprehensive Land Use Plan Map and the City of Redmond’s pre-1995 Comprehensive Plan and Zoning Regulations for the Agriculture District.

II. Findings of Fact

1. The Benaroya parcel is 32 acres in size. The Muller Farm parcel is 37 acres in size. FDO, Finding of Fact 8, at 4.
2. The Benaroya parcel is bordered on its northern and eastern sides by the “Muller Farm” property, which is deed restricted to agricultural and open space uses. The portion of the Muller Farm that is north of the Benaroya parcel is in unincorporated King County and designated “Agriculture” and is deed restricted to agriculture and open space uses. The portion of the Muller Farm that is within the City of Redmond lies east of the Benaroya

parcel. Both the Benaroya parcel and the Muller Farm parcel are currently designated “Urban Recreation”. FDO, Finding of Fact 9, at 4.

3. The City of Redmond adopted its GMA Comprehensive Plan on July 18, 1995 by Ordinance 1847. This Ordinance affirmed the agricultural designation and zoning of its Northern Sammamish Valley including the Benaroya and Muller parcels. Ordinance 1847.

4. In the Washington State Supreme Court decision of City of Redmond v. Central Puget Sound Growth Management Hearings Board (the **Redmond decision**), 136 Wn 2d 38, 959 P.2d 1091 (1996), the Board was reversed in part and upheld in part. The Court reversed the Board in part, disagreeing with the Board’s interpretation and definition of GMA agricultural lands, stating “We hold land is “devoted to” agricultural use under RCW 36.70A.030 if it is in an area where the land is actually used or capable of being used for agricultural production.” The Court also upheld the Board in part, finding that the GMA did not permit Redmond to designate GMA agricultural lands unless it had adopted a Transfer of Development Rights program adopted pursuant to RCW 36.70A.060(4).

5. The Redmond Development Code (**RDC**), as amended by Ordinances 1873 and 1901, has provisions for a Transfer of Development Rights. Chapter 20C.20A RDC, is entitled “Agriculture Regulations and Transfer of Development Rights.” FDO, Finding of Fact 18, at 5. This program has been in effect continuously since 1996. Transcript, at 48.

6. On December 10, 1996, by adoption of Ordinance 1917 the Redmond City Council changed the agricultural designation and zoning in the Northern Sammamish Valley, including the Benaroya and Muller parcels, from Agriculture to Interim Urban Recreation. Ordinance 1917.

7. On December 14, 1999, the Redmond City Council passed Ordinance 2050, amending its Comprehensive Plan and development regulations to create an “Urban Recreation” land use zone and to redesignate and rezone the Northern Sammamish Valley, including the Benaroya and Muller parcels, to these new categories. Ex. 4, Ordinance 2050.

8. Permitted uses in the “Urban Recreation Zone” under Ordinance 2050 include the following outright permitted “Resource Uses”: Growing and Harvesting Agricultural Crops and Forest Products; Horticulture, plant nurseries, arboretums, and pea patches; Raising or Boarding Livestock and Small Farm Animals; and Road Side Produce Stands selling products grown or processed on the property. Also allowed in the “Urban Recreation Zone,” subject to a discretionary permit, are “Recreation” uses including playfields, ball fields, country clubs, and golf courses. City Statement of Actions, Exhibit 6

9. The range of permitted uses, and the permit processes for them, under Ordinance 1917 is identical to those set forth in Ordinance 2050. Transcript, at 20.
10. The August 11, 2000 FDO established January 10, 2001 as the date for the City of Redmond to take legislative action to comply with the GMA. FDO, at 17.
11. On December 14, 2000, the Washington State Supreme Court issued a decision in King County v. Central Puget Sound Growth Management Hearings Board. Wn 2d 161, 979 P.2d 374 (2000) (the **King County decision**). This case involved land in unincorporated King County at the northern end of the Sammamish River immediately adjacent to the City of Woodinville. The Court reversed the trial Court and reinstated the Board's FDO which had invalidated the King County comprehensive plan and zoning amendments that allowed active recreational uses on parcels located within a designated agricultural area.
12. Pursuant to RCW 36.70A.300(3)(b), the January 10, 2001 date in the Grubb FDO gave the City one hundred and fifty-two days to comply.
13. The City did not file a request for reconsideration, as allowed pursuant to WAC 242-02-832. Transcript, at 8.
14. At no time prior to January 10, 2001, did the City indicate to the Board that it could not meet the compliance date and propose an alternate compliance schedule. Transcript, at 8.

III. APPLICABLE LAW AND DISCUSSION

A. Motion to Extend

Once the Board finds a jurisdiction is not in compliance with the GMA and remands the matter back to the jurisdiction, the Board must specify the compliance period in its FDO. RCW 36.70A.300. The Act prescribes a limited period to achieve compliance; it provides in relevant part:

[In the FDO], [t]he board shall specify a reasonable time *not in excess of one hundred eighty days*, or such longer period as determined by the board in cases of unusual scope or complexity, within which the . . . city shall comply with the requirements of this chapter.

RCW 36.70A.300(3)(b) (emphasis supplied).

In the Board's FDO, January 10, 2001 was established as the compliance date by which Redmond was required to take legislative action to achieve compliance – approximately 150 days. [1] The Board did not determine that the case was one of unusual scope or complexity, nor did Redmond make such an assertion.

Following issuance of the August 11, 2000 FDO, *the City did not move for the Board to reconsider its decision*, as provided for in the Board's Rules of Practice and Procedure, WAC 242-02-832. Transcript, at 8.

In the FDO the Board not only found noncompliance, but it also invalidated the City's adoption of Ordinance No. 2050, as it applied to two properties within the city-limits. Nonetheless, *the City did not file a motion with the Board to clarify, modify or rescind the determination of invalidity*, as provided in RCW 36.70A.302(6). Transcript, at 8.

At no time prior to the January 10, 2001 compliance date, did the City ever propose to the Board an alternative compliance schedule, nor did it seek an alternative compliance schedule with the concurrence or agreement of the Petitioner. Transcript, at 8. In fact, Petitioner urges the Board to proceed as required under the Act. Petitioner's Response, at 1-2.

The City's January 17, 2001 filing moves the Board to extend the compliance deadline until "May 9, 2001 (thirty days following the date for City's appeal [to Superior Court is] to be determined on the merits). City Statement of Actions, at 1-2, 6 and 15.

The May 9, 2001 date is beyond the one hundred eighty day limitation provided in RCW 36.70A.300(3)(b). The City has not exhausted the alternatives set forth in the Board's Rules or the GMA to modify the FDO's compliance date or adjust the compliance schedule. The City's motion to extend the compliance deadline is **denied**. The Board will proceed to determine whether the City has complied with the GMA pursuant to the compliance date established in the FDO.

B. Noncompliance, Invalidity and Sanctions

RCW 36.70A.330 provides, in relevant part:

(1) After the time set for complying with the requirements of this chapter under RCW 36.70A.300(3)(b) has expired, or at an earlier time upon the motion of a . . . city subject to a determination of invalidity under RCW 36.70A.300 [now RCW 36.70A.302], the board shall set a hearing *for the purpose of determining whether the . . . city is in compliance with the requirements of this chapter.*

(2) *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. . . .

(3) If the board after a compliance hearing finds that the . . . city is not in compliance, *the board shall transmit its finding to the Governor*. The board *may* recommend to the Governor that the sanctions authorized by this chapter be imposed. *The board shall take into consideration the . . . city's efforts* to meet its compliance schedule in making the decision to recommend sanctions to the Governor.

. . .

(5) The board shall schedule additional hearings as appropriate pursuant to subsections (1) and (2) of this section.

(Emphasis supplied.)

The Board remanded the matter with direction to the City to take the necessary legislative actions to comply with the GMA by no later than January 10, 2001. FDO, at 17. The City of Redmond took no legislative action to comply with the GMA by January 10, 2001. City Statement of Actions, at 1-15, Transcript, at 7.

C. Pleadings of the Parties

In its submittal, the City of Redmond states, “*The City is not yet in compliance* with the Final Decision and Order in this matter, which the Board issued on August 11, 2000.” City Statement of Actions, at 1 (emphasis supplied). The City indicates that: 1) it has appealed the Board’s FDO to King County Superior Court^[2] and the matter is scheduled for a hearing on the merits on April 9, 2000 (*sic* 2001); 2) on January 8, 2001, Judge Glenna Hall denied the City’s motion to stay the Board’s January 10, 2001 compliance deadline; and 3) if the City’s judicial appeal is not successful, it has taken the preliminary actions necessary to comply, needing only to take an affirmative vote adopting an ordinance re-designating the properties in question from Urban Recreation to Agriculture. City Statement of Actions, at 1. Therefore, in its January 17, 2001 filing, the City moves the Board for an extension of the compliance deadline until May 9, 2001; or, if the Board enters a Finding of Noncompliance, the City asks that the Board not recommend that the Governor impose sanctions at this time. City Statement of Actions, at 1-2. The City does not contest that it is not in compliance with the GMA. City Statement of Actions, at 2-15.

While it acknowledges that the purpose of the Board’s compliance hearing is to determine compliance, not to reconsider its decision, the bulk of the City Statement of Actions attempted to assign error to the FDO. First, Redmond asserted that the Board erred in finding an “agricultural conservation imperative” that takes precedence over the recreation goal of RCW 36.70A.020(9).

Second, it argued that “the City has never actually validly designated the . . . Benaroya and Muller parcels . . . as agricultural resource lands under the GMA. The only valid designation that has been applied is Urban Recreation.” Third, it argued that the FDO’s statement that there were no vested permits was incorrect and that “. . .to the extent that that forms the basis of the Board’s decision in this matter, that that was in error.” Transcript, at 14. Fourth, it argued that the development that has occurred in the vicinity make the Benaroya and Muller parcels no longer suitable for agricultural use, and argues that it was error for the Board to conclude otherwise. City Statement of Actions, at 6-7. ^[3]

Petitioner Grubb agrees that the City is not in compliance with the GMA and asks the Board to issue a “Finding of Noncompliance and take the action it deems appropriate and is available under RCW 36.70A.340 and .345 [authority to recommend sanctions].” Petitioner’s Response, at 1-2. The remainder of Petitioner’s Response rebuts the arguments made by the City regarding the FDO. Petitioner’s Response, at 2-10.

Intervenor Lake Washington Youth Soccer Association indicates that LWYSA believes the City’s appeal of the FDO to Superior Court will be successful, but disagrees that re-designation of the property to agriculture is necessary or that such re-designation is the only permissible response to the Board’s decision. LWYSA Response, at 1-2. LWYSA urges the Board to find the City in compliance with the GMA or remand the matter back to the City for further analysis as may be required under the Endangered Species Act. LWYSA Response, at 5.

Petitioner’s reply to LWYSA is that “The LWYSA is, in essence, asking the Board to reconsider its decision [the FDO].” Petitioner’s Reply, at 2. Petitioner urges the Board to “proceed under RCW 36.70A.330 – Noncompliance.” Petitioner’s Reply, at 3.

The Board agrees with Petitioner that LWYSA and the City are, in effect, asking the Board to reconsider the FDO. Such reconsideration is not timely in a compliance proceeding. The Board need not and does not reconsider the FDO. Nevertheless, certain points in the pleadings warrant clarification.

1. The “agricultural conservation imperative”

The first of the four issues that the City had prepared to argue in its judicial appeal questioned the Board’s reliance on an “agricultural conservation imperative” in the GMA. The City had alleged that:

. . . the Board erred when it found that the GMA’s agricultural preservation goal (RCW 36.70A.020(8)) creates an “agricultural conservation imperative” that takes precedence over all other GMA planning goals, including the goal of encouraging the retention of open

space and the development or recreational opportunities (RCW 36.70A.030(9)). City Statement of Actions, at 6.

This argument is identical to an argument made by the Northshore Youth Soccer Association, an Intervenor in the *Green Valley* case. This argument was rejected by the Board in that case, and rejected again by the Supreme Court upon appeal. In King County v. CPSGMHB 138 Wn 2d 161, 979 P.2d 374 (2000), the Supreme Court stated: “When read together, RCW 36.70A.020 (8), .060(1), and .170 evidence a legislative mandate for the conservation of agricultural land” (emphasis added).

The City appears to have grasped the weight and substance of this judicial direction. Redmond subsequently abandoned this argument, stating: The City concedes that . . . issues relating to the Board’s “agricultural conservation imperative” is no longer viable after the Washington Supreme Court’s ruling in King County v. Central Puget Sound Growth Management Hearings Board, Slip Opinion (December 14, 2000) commonly known as the “Green Valley” case.” City Statement of Actions, at 7.

2. Designation of the Benaroya and Muller Farm parcels as resource lands

Raised for the first time in the City Statement of Actions is the argument that these lands were not “designated” as resource lands under the GMA. It is true that the title of the two most recent zoning categories (“Urban Recreation” in Ordinance 2050 and “Interim Urban Recreation” in Ordinance 1917) did not contain the word “agriculture.” However, the substance of both of those ordinances certainly designated agricultural uses. To clarify, the fatal flaw in these two ordinances was not their agricultural resource provisions. Rather, as illuminated by the King County decision, the GMA does not permit the City to include in designated lands such incompatible non-resource uses as active recreation.

As Redmond acknowledged, both ordinances list as outright permitted a number of “resource” uses^[4] including “Growing and Harvesting Agricultural Crops and Forest Products.” Transcript, at 20. *See also* City Statement of Actions, Ex. 6. Ironically, the “urban recreation” uses allowed by those ordinances were not permitted outright, but instead were only permitted subject to a discretionary permit. *Id.*

The chronology of city ordinances regulating land use on the Benaroya and Muller parcels since 1995 (Ordinance 1847, Ordinance 1917 and Ordinance 2050) shows that the primarily permitted use on these parcels is, and has been, agricultural. *See also* Transcript, at 36. Notwithstanding the Supreme Court’s 1998 decision in the Redmond case, and the Board’s subsequent Finding of Compliance for Ordinance 1917, the City’s GMA land use regulations have listed agricultural uses as the primary (i.e., permitted outright) use for the Benaroya and Muller parcels from 1995

to the present day. Thus, these lands have been, and presently are, designated for resource land uses consistent with the requirements of RCW 36.70A.060 and .170.

In summary, the fatal flaw in Ordinance 2050 is the inclusion of the kind of active recreation uses (i.e., soccer fields) that the Supreme Court, in the King County decision, unequivocally ruled noncompliant with the GMA. ^[5]

3. Vested permits

The City appears to believe that the passing statement in the FDO about vested permits ^[6] was central to the Board's conclusions. To clarify, this is a misperception. The Board did not rely on the vested or un-vested status of the special development permit as a basis for its decision on the Benaroya and Muller parcels.

Even assuming *arguendo* that the special development permit is vested, the Board's reasoning and conclusion would be the same. The special development permit authorizes no "physical changes" (permanent or otherwise) such as grading, installation of improvements or erection of structures. Transcript, at 16. It authorizes only an *activity* (i.e., soccer practice) that is *temporary* in nature (i.e., the five year term of the permit). *Id.* Consequently, even if the "special development permit" is a vested permit, it is not a vested permit to develop the property, and therefore does not preclude the long-term use of these parcels for agricultural purposes.

4. Land Use Context

The context of adjacent land uses is important in assessing the long-term viability of parcels for agriculture. LWSYA incorrectly characterized the context as "smack in the middle of this city." To clarify, these parcels are actually on the perimeter of the city, immediately abutting unincorporated agriculturally designated land. The City asserts that land uses in the vicinity of the Benaroya and Muller parcels makes them untenable for agriculture. The Board concluded that none of the nearby "urban" land uses to which the City points are immediately adjacent (i.e., they are separated either by major roads or a river) nor fundamentally incompatible with agriculture as a neighbor. ^[7]

IV. CONCLUSIONS OF LAW

The City admits that it has not complied – "The City is not yet in compliance . . ." City Statement of Actions, at 1 and Transcript, at 8. The Board need not inquire further regarding the City of Redmond's compliance with the Act. The Board concludes that the City has not complied with the GMA, specifically RCW 36.70A.020(8), .060 and .170 as interpreted by the

Board in the FDO and by the Supreme Court in the Redmond and King County decisions. Therefore, **the Board will enter a Finding of Continuing Noncompliance**. This finding shall be transmitted to the Governor pursuant to RCW 36.70A.330(3).

In the FDO, the Board also entered a determination of invalidity as to that part of Ordinance No. 2050 that applied to the Benaroya and Muller properties. FDO, at 16 and 17. The City of Redmond offers no argument or evidence to indicate that it has taken any legislative action to cause the Board to rescind the determination of invalidity. City Statement of Actions, at 1-15. Therefore, **the Board will enter a Finding of Continued Invalidity**. This finding shall be transmitted to the Governor pursuant to RCW 36.70A.330(3).

RCW 36.70A.330(3) enables the Board to make a recommendation to the Governor that the sanctions authorized by the Act be imposed upon the City of Redmond. In making this decision, the Board is directed to consider the City's efforts, *or lack thereof*, to meet its compliance schedule and comply with the GMA. *Id.* The City admits that it is not in compliance with the Act. However, the City has committed to achieve compliance by no later than May 9, 2001, pending the outcome of its judicial appeal. Transcript, at 11-12. Therefore, **the Board will not recommend that the Governor consider imposing sanctions at this time**.

V. NOTICE OF SECOND COMPLIANCE HEARING

While the Board has denied the City's motion to extend, it is appropriate to set a second deadline for the City to take legislative action to achieve compliance with the GMA, specifically RCW 36.70A.020(8), .060 and .170, as interpreted by the Board in the FDO, and by the Supreme Court in the Redmond and King County decisions.

Pursuant to RCW 36.70A.330(5), the Board schedules a second compliance hearing in this matter for **10:00 a.m. on Thursday, June 14, 2001**. The scope of the second compliance hearing is: (1) the City's compliance with the GMA, specifically RCW 36.70A.020(8), .060 and .170, as interpreted by the Board in the FDO and by the Supreme Court in the Redmond and King County decisions; (2) whether the Board should affirm or rescind the findings of noncompliance and invalidity; and (3) in the event that the City remains in noncompliance, whether the Board should recommend that the Governor impose sanctions pursuant to RCW 36.70A.340.

VI. Order

Based upon the above referenced documents, the argument and briefing prepared by the parties, the Findings of Fact and Conclusions of Law set forth herein, the Board ORDERS:

1. The City's motion to extend the compliance deadline is **denied**.

2. The Board enters a **continued finding of noncompliance** for Ordinance 2050 as it applies to the Benaroya and Muller parcels.
3. The Board enters a **continued finding of invalidity** for Ordinance 2050 as it applies to the Benaroya and Muller parcels.
4. The Board establishes **4:00 p.m. on May 24, 2001** as the compliance deadline for the City to achieve full compliance with the FDO.
5. The Board schedules a **Second Compliance Hearing** in this matter for **10:00 a.m. on Thursday, June 14, 2001**. The Second Compliance Hearing will be held in Suite 1022 of the Financial Center, 1215 Fourth Avenue, in Seattle. The scope of the Second Compliance Hearing is: (1) the City's compliance with the GMA, specifically RCW 36.70A.020(8), .060 and .170, as interpreted by the Board in the FDO and the Supreme Court in the Redmond and King County cases (2) whether the Board should affirm or rescind the findings of noncompliance and invalidity; and (3) in the event that the City remains in noncompliance, whether the Board should recommend that the Governor impose sanctions pursuant to RCW 36.70A.340.
6. By **May 31, 2001**, at **4:00 p.m.**, the City shall submit to the Board, with a copy to all parties, an original and four copies of its Second Statement of Actions Taken to Comply (the **City's Second Statement**). Attached to the City's Second Statement shall be a copy of any legislative action taken by the City in response to the Board's FDO and a copy of any final judicial order issued by the Superior Court.
7. By **June 7, 2001**, at **4:00 p.m.**, Petitioner Grubb and Intervenor LWYSA shall submit to the Board, with a copy to opposing parties, an original and four copies of any Response to the City's Second Statement of Actions.
8. As required by RCW 36.70A.330(3) the Board shall transmit to the Governor a copy of this Order Finding Continued Noncompliance and Invalidity.

So ORDERED this 16th day of February, 2001

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
(Board Member McGuire enters a separate
concurring opinion)

Lois H. North
Board Member

Joseph W. Tovar, AICP
Board Member

Board Member McGuire's Concurrence

I concur in all respects with the Order in this decision. However, I would not have included the dicta in Section IIIC.

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration.

[1] One hundred and eighty days from the issuance of the FDO would have been February 7, 2001.

[2] The City filed its challenge to the Board's FDO with the Superior Court on September 7, 2000. *See*, City Statement of Actions, Attachment 7.

[3] LWYSA made a similar argument at the compliance hearing, questioning how the Board could conclude that agricultural uses could be retained on the Benaroya and Muller parcels when these properties were "right smack in the middle of this city." Transcript, at 33.

[4] Outright permitted uses in the "UR" zone include the following "Resource Uses": Growing and Harvesting Agricultural Crops and Forest Products; Horticulture, plant nurseries, arboretums, and pea patches; Raising or Boarding Livestock and Small Farm Animals; and Road Side Produce Stands selling products grown or processed on the property. City Statement of Actions, Exhibit 6.

[5] The Board notes the striking similarity of the fact pattern in the present case and that in the King County case. The sites are situated at opposite ends of the same valley. In both instances, a local government, at the behest of a local soccer association, purchased lands that it had previously designated as resource lands, then adopted zoning amendments to allow active recreation.

[6] The FDO provided:

The City's de-designation of the Benaroya and Muller parcels from agriculture resource lands to (permanent) urban recreation is not justified by the physical changes since 1995 that the City points to. No development has occurred on these lands, nor are there vested permits to develop them . . . Grubb FDO, at 14. Emphasis added.

[7] The Board's context analysis in the FDO provides:

. . . the Benaroya and Muller parcels are not surrounded by new and conflicting non-agriculture land uses. They are separated from the "60 acres park" to the east by the Sammamish River, and separated from the Willows Run Golf Course to the south by NE 116th St. They are separated by a major arterial (Willows Road) from the business park zoned hillside to the west. No evidence or argument was presented that either golf course or business park development is an incompatible adjacent land use that would make agriculture non-viable. *Id.* Footnote omitted.