

The Board **remands** Ordinance No. 03-104 to the County with the following directions:

1. By no later than **September 3, 2004**, the County shall take appropriate legislative action to bring its Plan and implementing development regulations into compliance with the goals and requirements of the GMA [RCW 36.70A.110(4)], as interpreted and set forth in this Final Decision and Order (**FDO**).
2. By no later than **September 10, 2004**, the County shall file with the Board an original and four copies of a Statement of Action Taken to Comply (**SATC**) with the GMA, as interpreted and set forth in this FDO. The SATC shall attach copies of legislation enacted in order to comply. The County shall simultaneously serve a copy of the SATC, with attachments, on Petitioner and Intervenor. By this same date, the County shall file a "**Remand Index**," listing the procedures and materials considered in taking the remand action.
3. By no later than **September 20, 2004**,¹ the Petitioner or Intervenor may file with the Board an original and four copies of Comments on the County's SATC. Petitioner and Intervenor shall each simultaneously serve a copy of its Comments on the County's SATC on the County and each other.
4. By no later than **September 27, 2004**, the County may file with the Board an original and four copies of the County's Reply to Comments. The County shall simultaneously serve a copy of such Reply on Petitioner and Intervenor.

Pursuant to RCW 36.70A.330(1), the Board hereby schedules the **Compliance Hearing** in this matter for **10:00 a.m. September 30, 2004** at the Board's offices. With the consent of the parties, the compliance hearing may be conducted telephonically.

If the County takes legislative compliance actions prior to the September 3, 2004 deadline set forth in this Order, it may file a motion with the Board requesting an adjustment to this compliance schedule.

¹ September 20, 2004 is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. *See* RCW 36.70A.330(2).

CTED II, FDO, at 12-13; the determination of invalidity is entered in the FDO, at 11-12.

On September 10, 2004, the Board received “Snohomish County’s Statement of Actions Taken to Comply” (**SATC**), with four attached exhibits [Attachments A, B, C and D], including a copy of Resolution No. 04-023 [Attachment A].

The Board did not receive any comment on the SATC from Petitioner CTED nor Intervenor School District.

On September 28, 2004 the Board received a letter (**9/28/04 Letter**), via facsimile, from the County indicating that “the parties . . . have agreed to conduct the September 30, 2004 compliance hearing telephonically.” 9/28/04 Letter, at 1.

On September 30, 2004, the Board conducted the compliance hearing telephonically. Present for the Board were Board Members Edward G. McGuire, Margaret A. Pageler and Bruce C. Laing. Jason J. Cummings represented and participated on behalf of Snohomish County. Alan D. Copsy participated on behalf of Petitioner. Intervenor Snohomish School District did not participate in the compliance proceeding.

II. DISCUSSION

Ordinance No. 03-104 amended the County’s GMA Plan and development regulations to permit rural churches and schools to connect to sewer service contrary to the provisions of RCW 36.70A.110(4).

On September 1, 2004 Snohomish County adopted Resolution No. 04-023. The Resolution provides:

The County Council recognizes the Final Decision and Order issued by the Board and acknowledges the legal effect of the Severability Clause contained in Ordinance No. 03-104. If it has not already been accomplished, the County Code Reviser is directed to update the County Code to reflect the invalidity of Ordinance No. 03-104 and re-instate the former provisions. The Clerk of the Council is also directed to reflect the Board’s Final Decision and Order where appropriate in the GPPs. The County Council further directs the Clerk of the Council to publish this resolution.

Resolution No. 04-023, at 3. Attachment B to the SATC contained a copy of the re-instated provisions of the County’s GMA Plan and Attachment C contained the re-instated provisions to the County Code – Snohomish County Code Sections 7.44.030, 30.29.110 and 30.29.120. Attachment D contained a copy of the published legal notice for Resolution 04-023. *See* SATC and Attachments.

In its SATC, at 2-3, the County states,

Since, by operation of law, the amendments authorized by Ordinance No. 03-104 were rendered ineffective when the Board made its determination of invalidity, the County concluded that no action it could take would provide greater compliance with the GMA than has already been achieved with the savings clause. Resolution No. 04-023 acknowledges this, *informs the public of the effect*, and ensures that the text of both the GPPs and development regulations reverted to their prior provisions.

(Emphasis provided).

All parties to the telephonic compliance hearing agree that the prior provisions of the County's GMA Plan and development regulation have been reinstated and that the public has been informed of this action via adoption of Resolution No. 04-023.

The Board concurs. The Board recognizes that the savings clause operates to revive prior provisions in the County's Plan and development regulations. However, operation of the savings clause typically escapes the public view. The resolution provides not only acknowledgement of the effect of the Board's FDO, but more importantly, it also informs the public that the amendments contained in Ordinance No. 03-104 are ineffective and are no longer part of the Plan or County Code.

III. FINDINGS and CONCLUSIONS

Findings of Fact:

Based upon the submittals of the parties, comments offered at the compliance hearing, and the Board's discussion *supra*, the Board finds:

1. RCW 36.70A.330 requires the Board to conduct a compliance hearing.
2. The Board's May 4, 2004 FDO found Ordinance No. 03-104 noncompliant and invalid; it was remanded and Snohomish County was directed to take appropriate legislative action to achieve compliance with the Act, according to a compliance schedule. *CTED II*, FDO, at 11-13.
3. On September 1, 2004, the County adopted Resolution No. 04-023. The Resolution acknowledges the Board's FDO and operation of the savings clause in Ordinance No. 03-104. The Resolution was published. The prior provisions of the County's GMA Plan and development regulations have been reinstated, pursuant to the Board's remand. *See* SATC, at 1-5, and Attachments A, B, C and D.
4. On September 10, 2004, consistent with the compliance schedule, the City filed a timely SATC, with attachments. *Id.*
5. No comments on the SATC were received from Petitioner or Intervenor.

6. The Board conducted the compliance hearing, telephonically, on September 30, 2004.

Conclusions of Law:

Based upon the submittals of the parties, comments at the compliance hearing, and the Board's discussion and findings of fact 1-6, *supra*, the Board concludes:

1. The County's enactment of Resolution 04-023 acknowledges the Board's FDO and the operation of the savings clause in noncompliant and invalid Ordinance No. 03-104. The prior provisions to the County's Plan and development regulations, regarding the extension of sewers in the rural areas are reinstated. Notice of this action has been published to inform the public that the provisions of Ordinance No. 03-104 are ineffective.
2. The County's enactment of Resolution No. 04-023 **complies** with the goals and requirements of the Growth Management Act as set forth and interpreted in the Board's May 4, 2004 FDO. Invalidity, as to these provisions, is **rescinded**.

IV. RECISSION OF INVALIDITY and FINDING OF COMPLIANCE

Based upon review of the Board's May 4, 2004 FDO, Snohomish County's SATC (including Attachments A through D), the arguments and comments of the parties at the compliance hearing, and the findings of fact 1-6 and conclusions of law, *supra*, the Board **rescinds invalidity** and finds that Snohomish County has **complied** with the goals and requirements of the GMA as set forth in the aforementioned Board Order. The Board therefore enters **Finding of Compliance** for Snohomish County re: CPSGMHB Case No. 03-3-0020.

So ORDERED this 30th day of September 2004.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300.