



On June 1, 2004, the Board issued its “Order Rescinding the April 9, 2004 Order Rescinding Findings of Noncompliance and Invalidity” in the above captioned case.

On June 24, 2004, the Board issued its “Order Finding Continuing Noncompliance and Continuing Invalidity and Recommendation for Gubernatorial Sanctions” in the above captioned case.

On July 22, 2004, the Board issued its “Order Granting Reconsideration [Revising Finding of Fact 17] and Denying Motion to Enter Determination of Validity Pursuant to RCW 36.70A.302(4)” in the above captioned case. The July 22, 2004 Order provided:

A copy of this Order will be transmitted to the Governor, and the Board will take no further action on this matter until such time as the Governor or a court directs that the Board should notify the parties to this case and schedule further compliance proceedings.

7/22/04 Order, at 9-10.

Between July and December 2004, the Governor’s Office communicated several times with Snohomish County regarding the County’s compliance with the GMA and the possibility of gubernatorial imposed sanctions.

On December 27, 2004, via letter, the Governor advised Snohomish County that gubernatorial sanctions – withholding the County’s share of motor vehicle excise taxes – would be imposed as of March 1, 2005. The Governor’s letter noted that the County had taken no action to address noncompliance of the Island Crossing property with the Growth Management Act.

On January 5, 2005 the Board received a letter from the Governor’s Office directing the Board to review an attached copy of Resolution 05-001 to determine whether it addressed the County’s noncompliance with regard to the Island Crossing Property. Resolution 05-001 is entitled:

ACTING TO COMPLY WITH THE ORDER FINDING CONTINUING NONCOMPLIANCE AND CONTINUING INVALIDITY AND RECOMMENDATION OF GUBERNATORIAL SANCTIONS ISSUED BY THE CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD IN CASE NO. 03-3-0019C CONCERNING PROPERTY AT ISLAND CROSSING.

Resolution 05-001, at 1.

## II. BOARD DISCUSSION

The Board's July 22, 2004 Order stated:

In its current motion, the County suggests that the Board's June 24, 2004 Order with its determination of invalidity, and operation of the Ordinance's severability clause, revives the prior Plan and zoning designations<sup>2</sup> that existed for the Island Crossing area. But again, the County expresses no intent to take legislative action to designate the noncompliant lands to comply with the GMA as interpreted in the Board's June 24, 2004 Order. If, as the County contends, these are the prior Plan and zoning designations that have been found to comply with the GMA [footnote omitted], then the County should take legislative action to adopt these designations and repeal the conflicting provisions of Ordinance Nos. 03-063 and 04-057.

Undertaking such legislative action would remove any ambiguity or doubt regarding the County's Plan and zoning designations for the Island Crossing area. *Specific legislative action to clearly establish the designations is important to provide clarity and certainty to the citizens of Snohomish County, since the maps and designations shown in an Ordinance are more readily apparent and relied upon than a severability clause which negates those same designations. Additionally, interested citizens would have to look beyond the face of the Ordinance to determine whether any of its provisions had been invalidated by this Board or a Court to determine whether the facial provisions of the Ordinance were, or were not, still effective. While severability clauses are certainly legal, their practical effect in the land use context is dubious without follow-up legislation to provide clarity and certainty.*

...

The Board concludes that the effect of the operation of the severability clause is ambiguous and in doubt. Does the initial determination of invalidity, its rescission, its reinstatement act as an impediment to reviving the land use designations prior to the adoption of Ordinance No. 06-063? The Board has been cited to no authority conclusively answering this question. *However, as discussed supra, to remove this ambiguity and doubt, and reflect the County's intent as indicated in its motion, it should take legislative action to reinstate prior GMA compliant designations and repeal provisions of Ordinance Nos. 03-063 and 04-057 that contradict and conflict with those designations. Such action would remove any ambiguity and doubt arising from the operation of the*

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<sup>2</sup> The County indicates that these designations are: Riverway Commercial Farmland and Rural Freeway Service (Plan designations) and A – 10 and Rural Freeway Service (zoning designations).

*severability clause.* Affirmative action such as this seems especially appropriate to provide certainty and clarity to the citizens of Snohomish County and where the County is facing a recommendation of Gubernatorial sanctions. Therefore, the Board **denies** the County's Motion for a Determination of Validity, pursuant to RCW 36.70A.302(4).

7/22/04 Order, at 8-9, (emphasis supplied).

Snohomish County's resolution states:

WHEREAS, *Snohomish County wishes to make clear its intentions that the land use designations on the Island Crossing property not be out of compliance and invalid with the Board rulings* during the pendency of the court of appeals in the Island Crossing case.

NOW, THEREFORE, IT IS RESOLVED that Snohomish County hereby states its intention that *the property at Island Crossing retains the land use designations (Rural Freeway Service and Riverway Commercial Farmland on the comprehensive plan, and Rural Freeway Service and Agriculture – 10 Acre on the zoning map) that were in effect prior to the adoption of Amended Emergency Ordinance No. 04-057*, and that Snohomish County does not intend to take any further legislative action regarding the property unless and until the Board's holdings in Case No. 03-3-0019c are reversed by a court of competent jurisdiction.

Resolution 05-001, at 5, (emphasis supplied).

As expressed in the Board's prior Orders, for the County to achieve compliance, provide a basis for rescinding invalidity and withdrawal of the recommendation of sanctions, the Board sought: 1) specific legislative action by the County to remove any ambiguity or doubt related to the Island Crossing Plan and zoning designations; and 2) for the County to clearly reinstate the prior compliant land use plan and zoning designations in order to provide clarity and certainty to the citizens of Snohomish County regarding the Island Crossing property.

The Board finds that Snohomish County's adoption of Resolution 05-001 removes ambiguity and doubt so that property owners and others are not misled as to the effective Plan and zoning designations for the Island Crossing property. Resolution 05-001 clarifies and retains the Rural Freeway Service and Riverway Commercial Farmland designations in the comprehensive plan and retains the Rural Freeway Service and Agriculture – 10 Acre designations on the zoning map for the Island Crossing area that has been the subject of this appeal.

The Board concludes that Snohomish County's Resolution 05-001 reaffirms and retains previously determined GMA compliant comprehensive plan (Rural Freeway Service and Riverway Commercial Farmland) designations and previously determined GMA

compliant zoning designations (Rural Freeway Commercial and Agriculture 10 Acre) for the Island Crossing property.

Therefore, Snohomish County's adoption of Resolution 05-001 complies with the provisions of the Growth Management Act as reflected in the Board's Orders in this matter. Consequently, the Board will issue a Finding of Compliance and Rescind the Determination of Invalidity and Withdraw the Recommendation for Gubernatorial Sanctions.

### **III. ORDER**

Having reviewed and considered Resolution 05-001, the Board's prior Orders in this matter, other Orders of this Board, having deliberated on the matter, and based upon the findings and conclusions noted above, the Board ORDERS:

1. Snohomish County's adoption of Resolution 05-001 removes ambiguity or doubt as to the plan and zoning designations for the Island Crossing property. Resolution 05-001 reaffirms and retains the Rural Freeway Service and Riverway Commercial Farmland comprehensive plan designations and the Rural Freeway Commercial and Agriculture 10 Acre zoning map designations for the Island Crossing property.
2. These comprehensive plan and zoning designations have been previously determined to comply with the provisions of the Growth Management Act. Therefore, the Board enters a Finding of Compliance for Snohomish County in this matter.
3. Additionally, by adopting Resolution 05-001, the County has removed the substantial interference with the goals 1, 2 and 8 [RCW 36.70A.020(1), (2) and (8)]. Therefore, the Board Rescinds the Determination of Invalidity for Snohomish County in this matter.
4. Finally, having entered a Finding of Compliance and Rescinded Invalidity, the Board withdraws its Recommendation for Gubernatorial Sanctions.
5. A copy of the Order shall be transmitted to the Governor.

So ORDERED this 6<sup>th</sup> day of January 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Bruce C. Laing, FAICP  
Board Member

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Edward G. McGuire, AICP  
Board Member

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Margaret A. Pageler  
Board Member