

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

JOCELYNNE FALLGATTER,)	
)	CPSGMHB Case No. 06-3-0034
Petitioner,)	
)	(Fallgatter VIII)
v.)	
)	ORDER FINDING
CITY OF SULTAN,)	CONTINUING
)	NONCOMPLIANCE AND
Respondent.)	INVALIDITY [Re: TIP] and
)	AMENDING COMPLIANCE
)	SCHEDULE
)	
)	
)	

I. BACKGROUND

On February 13, 2007, the Board issued its Final Decision and Order (FDO) in this matter. The FDO stated:

1. The City of Sultan’s adoption of Resolution No. 06-10, the 2006-2012 TIP, was **clearly erroneous** and **does not comply** with the requirements of RCW 36.70A.120, and **is not guided** by GMA goals RCW 36.70A.020(1), (3), and (12).
2. Therefore the Board **remands** Resolution No. 06-10 to the City of Sultan with direction to the City to take legislative action to comply with the requirements of the GMA as set forth in this Order.
3. The Board further finds and concludes that the enactment of Resolution No. 06-10 substantially interferes with the goals and requirements of the GMA. The Board therefore enters an **order of invalidity**.

The FDO established May 15, 2007, as the deadline for the City of Sultan to take appropriate legislative action to bring its 2006-2012 TIP into compliance with the GMA. The Compliance Hearing was set for June 4, 2007, at 10:30 a.m. or immediately following the compliance hearing in *Fallgatter V v. City of Sultan*, CPSGMHB Case No. 06-3-0003.

On May 21, 2007, the Board received the City's Status Report RE: Compliance and City's Compliance Index. On May 29, 2007, the Board received Petitioner's Response to City's Status Report and Response to City's Compliance Index.

On June 4, 2007, the Compliance Hearing was convened in the Board's offices at 10:45 a.m. Present for the Board were Margaret Pageler, Presiding Officer, Board members Ed McGuire and Dave Earling, law clerk Julie Taylor, and extern Linda Jenkins. Thom Graafstra represented the City of Sultan, with City Administrator Deborah Knight also in attendance. Petitioner Jocelyne Fallgatter appeared *pro se*. Jeff Kirkman also attended. The hearing was adjourned at approximately 11:00 a.m.

At the outset of the Compliance Hearing, the Board incorporated into the record the discussion in the immediately-preceding Compliance Hearing for *Fallgatter V*, to the extent relevant to the present matter.

II. DISCUSSION

RCW 36.70A.070(6) sets out the mandatory components of the transportation element of a comprehensive plan, including the six-year TIP. The City's Status Report RE: Compliance stated that the City has not yet completed the work to bring its six-year TIP into compliance. City Status Report, at 2. The City stated that its 2007 TIP is due to the Washington State Department of Transportation on August 1, 2007. *Id.* The City provided its calendar of anticipated actions to complete the 2007 TIP and requested the Board to set August 15, 2007, as a new compliance deadline.

Petitioner concurred that the City is on track to complete a compliant TIP and joined the request for an extended compliance schedule.¹

The Board notes that the City's TIP has been the subject of repeated appeals by Petitioner Fallgatter. See FDO, at 6, fn. 5. In the FDO, the Board entered a determination of invalidity, stating:

[T]he statutory deadline for this work has long passed, and a TIP based on the non-compliant Plan element is clearly erroneous. Particularly in light of the City's rapid growth, the Board finds that the lack of a compliant TIP thwarts the goals of the GMA and **substantially interferes** with the achievement of Goal 1, Goal 3, and Goal 12. Accordingly, the Board enters a **determination of invalidity....**

FDO, at 15.

¹ Petitioner was not confident that the work would be satisfactorily completed by August 1, 2007. 06334 Fallgatter VIII v. City of Sultan (June 18, 2007)

The TIP has not yet been brought into compliance with the GMA. Accordingly, the Board will enter an **order of continuing noncompliance and invalidity** and will notify the Governor's office of this determination. The Board will extend the compliance schedule as requested by the City. If compliance is not achieved by the extended deadline, the Board may request that the Governor impose sanctions.

III. ORDER

Based upon review of the Compliance Status Report, the briefs and exhibits submitted by the parties, the GMA, prior Board Orders and case law, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

1. The City of Sultan has not yet brought its TIP into compliance with the GMA and the Board's Order. The Board therefore enters an **order of continuing noncompliance and determination of continuing invalidity**.
2. The Board extends the schedule for the City's compliance as follows:
 - The Board establishes **August 15, 2007**, as the deadline for the City of Sultan to take appropriate legislative action.
 - By no later than **August 31, 2007**, the City of Sultan shall file with the Board an original and four copies of the legislative enactment described above, along with a statement of how the enactment complies with this Order (**Statement of Actions Taken to Comply - SATC**). By this same date, the City shall also file a "**Compliance Index**," listing the procedures (meetings, hearings, etc.) occurring during the compliance period and materials (documents, reports, analysis, testimony, etc.) considered during the compliance period in taking the compliance action.
 - By no later than **September 10, 2007**,² the Petitioner may file with the Board an original and four copies of Response to the City's SATC.
 - By no later than **September 14, 2007**, the City may file with the Board a Reply to Petitioner's Response.
 - Each of the pleadings listed above shall be simultaneously served on the other party to this proceeding.
 - Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **September 17, 2007, at 10:00 a.m.** at the Board's offices. If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. If the City of Sultan

² September 10, 2007, 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). The Compliance Hearing is limited to determining whether the City's remand actions comply with the Legal Issues addressed and remanded in the FDO.

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takes the required legislative action prior to the August 15, 2007, deadline set forth in this Order, the City may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 18th day of June, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member