

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

WHATCOM ENVIRONMENTAL COUNCIL,)	
)	
Petitioner,)	No. 94-2-0009
)	
vs.)	ORDER
)	
WHATCOM COUNTY,)	
)	
Respondent.)	
_____)	

In the Final Order in this case dated November 11, 1994, we found that Ordinance #94-033, establishing Interim Urban Growth Areas (IUGAs), was not in compliance with the Growth Management Act (GMA, Act). We stated that in order to achieve compliance Whatcom County must do two things:

1. Not extend the IUGA outside of municipal boundaries without proper analysis and without appropriate public participation; and
2. Adopt development regulations (DRs) that prohibit new urban growth in areas outside of properly established IUGAs.

In that Final Order we determined that the County's acknowledged lack of any land capacity analysis for planning purposes meant that the IUGAs which were established were not in compliance with the Act. We also determined that the County had not adopted any DRs that prohibited "urban growth" outside existing IUGAs.

On January 23, 1995, after a compliance hearing, we entered an order determining that the County continued to be not in compliance. The County had taken no action to make any changes to Ordinance #94-033 and stated at the compliance hearing that no future action was contemplated. Thereafter, we recommended to the Governor that sanctions be imposed.

Pursuant to the recent amendments in RCW 36.70A.330, we held a second compliance hearing on December 14, 1995, and issued an Order dated December 28, 1995. In that order we held that the noncompliance status was continued because the County had not taken any further action since the original order. We also decided to postpone any determination of invalidity pursuant to RCW 36.70A.330(4) until a hearing scheduled for January 30, 1996. We established a new date of January 19, 1996, for the County to comply.

On January 23, 1996, the County Council adopted emergency Ordinance #96-006. This was the first action of the County to attempt to achieve compliance during the 14 months since the Final Order. On January 26, 1996, we held a telephone conference with the parties and a number of participants to discuss what action to take as a result of the new Ordinance. We thereafter notified the parties that the hearing scheduled for January 30, 1996, would be continued until February 27, 1996. This Order is a recitation of our decision regarding the methods of procedure in this case in light of Ordinance #96-006. We also established a different hearing date of February 28, 1996, rather than February 27, 1996.

We make the following holdings with regard to the issues in this case. We urge any party or participant who disagrees with these holdings to include arguments in the briefing and at the hearing on February 28, 1996.

The new Ordinance (#96-006) is divided essentially into two parts. Findings 1-35 and conclusions 1-4 and the implementations thereof concern the configuration of the new IUGAs. These IUGAs include areas that are adjacent to existing municipalities and other IUGAs which are not adjacent to existing city limits. The Ordinance, in so far as it recites that analysis and reliance upon evidence was used in reaching the County Council's determination, appears on its face to comply with our suggestions in the Final Order. There are significant changes that have been made through the existing ordinance which address the lack of analysis problems found in the original Ordinance #94-033. Additionally, review of that portion of the Ordinance regarding the establishment and configuration of the various IUGAs would appear to be a complex matter. In light of all of these factors, and the fact that the County has indicated it is not asking for a new finding of compliance with regard to Ordinance #96-006, we determine that any challenge to the configuration aspect of this ordinance should and must be done by means of a new petition filed

within 60 days of the date of publication.

An entirely different proposition is presented by findings 36-42 and conclusions 5 and 6. That portion of the Ordinance deals with the requirement of prohibition of new urban growth outside the properly established IUGAs. Our review of the current ordinance with regard to the previous finding of noncompliance does not appear on its face to involve significant changes. We have been requested by Petitioner in this case to hold a hearing to determine whether the new ordinance is in compliance with the Act and/or whether that portion of the ordinance should be declared to be invalid under the test set forth in RCW 36.70A.300(2). In light of the apparent non-action by the County Council in making any significant changes or adopting any DRs that prohibit urban growth in the rural areas, we set the compliance hearing for February 28, 1996, at 9:00 a.m. to be held at the Whatcom County Courthouse, Council Chambers, 1st floor, 311 Grand Avenue, Bellingham.

Any party or participant challenging the compliance of this new ordinance or making a request for a determination of invalidity must file an opening brief at our office and serve it on other parties by 4:30 p.m. February 7, 1996. Any party or participant supporting the compliance of the Ordinance or refuting a finding of invalidity must have a responding brief filed at our office and served on other parties by 4:30 p.m. February 20, 1996. Any reply brief must be filed at our office and served on other parties by 4:30 p.m. February 23, 1996. It is not necessary to resubmit any exhibits already on file. However, explicit reference to those exhibits must be included in the brief in order to be considered. Any new exhibits must be submitted contemporaneously with a brief.

Dated this 30th day of January, 1996.

William H. Nielsen
Presiding Officer

Nan A. Henriksen
Board Member

Les Eldridge

Board Member