BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

WHIDBEY ENVIRONMENTAL ACTION NETWORK,	)	
	)	No. 95-2-0063
Petitioner,	)	
	)	FOURTH
vs.	)	COMPLIANCE
	)	HEARING
ISLAND COUNTY,	)	ORDER
	)	
Respondent.	)	
	)	

We issued our third compliance order in this case on October 6, 1997. In that order we found that Island County (County) still had not adopted a comprehensive plan (CP) and implementing development regulations (DRs) as required by the Growth Management Act (GMA, Act). Further, the only limiting of new urban development outside interim urban growth areas (IUGAs) was the result of the previous finding of invalidity in our April 10, 1996, second compliance hearing order. We reaffirmed our previous invalidation of certain portions of the Island County Code (ICC) and found that several additional sections of the ICC also substantially interfered with the goals of the Act.

In our October 6, 1997, Order we stated:

> "…..The County has had nearly four years since GMA required it to do so to constrain urban growth and sprawl.
>
> To compel compliance with GMA, we have only two powers: invalidating plans and regulations which substantially interfere with the fulfillment of GMA's goals and requesting the Governor to impose financial sanctions.

> Wean also requested that we recommend to the Governor that sanctions be imposed. Although sanctions may be justified at this time, we wish to give Island County one more opportunity to bring itself into compliance before we take such action.
>
> An additional compliance hearing is scheduled for February 4, 1998. If Island County has not adopted a comprehensive plan by that date, we will consider recommending sanctions."

The February 4, 1998, compliance hearing was held in Olympia. Present were the three members of the Western Washington Growth Management Hearings Board. Representing the County were Keith Dearborn and Vincent Moore; representing Whidbey Environmental Action Network (WEAN) were Steve Erickson and Marianne Edain; representing participant Save the Woods on Saratoga (SWS) was David Bricklin; participant William Appelgate was also present.

We dealt with the following at the February 4, 1998, hearing:

1. Motions by WEAN against compliance and validity of Interim Ordinance C-78-97, PLG-023-97 (Interim Ordinance): We orally ruled that any challenges to procedural or substantive compliance of the Interim Ordinance must be made by way of a new petition.

2. County's January 23, 1998, motion to supplement the record: We denied A, maps of candidate resource lands and B, newspaper articles. We admitted C, issue paper, Planning Commission recommendation and the Board of County Commissioners' tentative decision for:

    1. Non-municipal urban growth areas (UGAs);
    2. Rural areas of more intensive development;
    3. Measures to protect rural character.

3. The County's January 30, 1998, motion to supplement the record: We denied the motion.

We then heard a presentation by the County on actions taken to achieve compliance and its proposed schedule for the completion of reaching compliance. We also heard argument on the

County's previously filed motion to modify the third compliance order. We were not persuaded by the County's argument and deny the motion.

SWS joined WEAN in its motion requesting contingent sanctions.

We consider a wide range of evidence in deciding whether to recommend sanctions to the Governor. Two matters are primary:

1. Is the County not proceeding in good faith to meet the requirements of the Act; and/or

2. Has the County unreasonably delayed taking the required action?

We commend the County for its current good faith effort to complete and adopt a CP and DRs. Since our last compliance hearing, the County has signed contracts with five consulting firms and authorized the use of overtime and the hiring of temporary help to work on the CP and DRs. It has set out a detailed and challenging schedule for completion of the CP and DRs by April 27, 1998. The County has, on the whole, adhered to that schedule thus far. An interagency team from the state is assisting in this process. In addition, Department of Fish and Wildlife and Department of Ecology personnel are helping to develop Shoreline Management Plan policies and regulations relating to undeveloped shorelines to be incorporated into the CP and DRs by April 27, 1998.

On the other hand, we understand WEAN and SWS's frustration with the multitude of schedules the County has supplied to us and not kept in the past three years and our continued granting to Island County .."one more opportunity to bring itself into compliance," before taking the requested remedial actions.

The GMA requires the County to adopt its CP by January 1, 1995. Since the County is now more than three years past that deadline without adopting a CP, it has unreasonably delayed taking the required action. We therefore find it appropriate to request sanctions by the Governor. However, we will delay sending such a request to June 15, 1998. If we have not received notification from the County of adoption of a CP and implementing DRs by June 15, 1998, we will immediately

send a letter to the Governor recommending that he impose sanctions.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 17th day of February, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Nan A. Henriksen
Board Member

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Les Eldridge
Board Member

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William H. Nielsen
Board Member