

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

SEAVIEW COAST CONSERVATION COALITION,)	
)	No. 95-2-0076
)	
Petitioner,)	ORDER
)	RESCINDING
vs.)	JULY 10, 1997
)	DETERMINATION
PACIFIC COUNTY,)	OF INVALIDITY
)	
Respondent.)	
_____)

On June 17, 1997, the parties to this proceeding entered a stipulation requesting that we make a finding of invalidity on a certain portion of the Long Beach Peninsula outside the interim urban growth areas (IUGAs) of Pacific County. The stipulation requested us to enter a finding of invalidity for any subdivision of land proposed under Ordinance #31-A and #31-B (regular subdivisions) and/or short subdivisions covered under Ordinance #48-B and #48-C. The stipulation was limited to the geographical location of the "Seaview Dunal Area" (SDA) covered by SDR-1 zoning classification. The stipulation was precipitated by a hearing scheduled June 17, 1997, to consider a motion by petitioners for a finding of invalidity for divisions of land within the SDA. We had previously issued findings of invalidity for the SDA on July 31, 1996, and February 6, 1997, based primarily upon Pacific County's failure to adopt critical area (CA) development regulations (DRs). Those findings of invalidity were rescinded on May 28, 1997, because of adoption of CA Ordinance #147 by Pacific County.

The order, prepared by petitioner's attorney, agreed to by the County's attorney and submitted contemporaneously with the stipulation, was signed by us on July 10, 1997. The order provided in part, that:

"2. Under RCW 36.70A.300, Pacific County Ordinance No. 31-A as amended by Ordinance No. 31-B (subdivision) and Pacific County No. 48-B as amended by Ordinance No. 48-C (short subdivision) substantially interfere with Goals 1 and 2 of the GMA are

declared to be invalid for *any subdivision and short subdivision activity that occurs within the SDR-1 zone in the Seaview Dunes.*” (Italics supplied).

The purpose of the stipulated agreement and the agreed order was to prohibit subdivisions in the dunal area and preserve it until adoption of the comprehensive plan (CP) and UGAs.

Pacific County adopted its CP on October 13, 1998. Ordinance #149 which prohibited any subdivision of property to an average size of less than 5-acres in the SDA was adopted on August 24, 1999. No petition for review (PFR) to either of these enactments was filed by petitioner.

On December 1, 1999, Pacific County moved to rescind the invalidity order entered on July 10, 1997. On December 21, 1999, petitioner filed a brief opposing the County’s motion. On December 28, 1999, the County filed a reply. A telephonic hearing was held on January 4, 2000. **We grant the County’s motion to rescind the order of invalidity entered July 10, 1997.**

Under RCW 36.70A.320(4) the County has the burden of demonstrating that the ordinance it enacted in response to the determination of invalidity “will no longer substantially interfere with the fulfillment of the goals” of the Growth Management Act (GMA, Act). There is now an average 5-acre minimum subdivision lot size under Ordinance #149. As to subdivisions in the SDA, there is no longer substantial interference with the goals of the Act.

Petitioners contended that the boundary-line adjustments exemption at §3(c) would have the potential for creation of new substandard lots. The County correctly pointed out that it is required under RCW 58.17.040(6) to exempt boundary-line adjustments from subdivision coverage as long as no additional lots are created. The language of Ordinance #149 §3(c) mirrors the statutory requirement. There is no evidence in this record that such minor boundary-line adjustments would in any way substantially interfere with the goals of the Act. The County has sustained its burden.

Petitioners also complained that the failure of the County to adopt implementing DRs while leaving the SDR-1 zoning classification (which allows lot sizes of 15,000 square feet to 2 acres) in effect should be the basis for refusing to lift invalidity. Petitioners misperceive the scope of

the determination of invalidity in the July 10, 1997 order. SDR-1 was last amended in June 1995 and has never been the subject of a PFR. Moreover, the reference in the order and the underlying stipulation to the SDR-1 zone was for the purpose of identifying the location of the invalidity determination, and did not address whether SDR-1 was invalid.

We have not specifically been asked, at this time, to make a finding of invalidity based upon the lack of implementing DRs, and could not do so within the scope of this hearing and order. The County concedes that it is not in compliance with the GMA and cannot possibly achieve that status until adoption of DRs. It has been 9 years since the County opted into GMA, more than 5 years since the deadline for adoption of DRs, and more than 2 ½ years since the last stipulated agreed adoption date has passed. The County has received significant grants from the Department of Community, Trade, and Economic Development. We cannot characterize this continued failure to adopt DRs as anything but inexcusable. Some progress by Pacific County has been made but it has been laborious. Difficult decisions are still required by the County in order to fulfill the legislative mandate embodied in the GMA.

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 11th day of January, 2000.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge

Board Member

Nan A. Henriksen

Board Member