

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

SEAVIEW COAST CONSERVATION COALITION,)	
a Washington non-profit corporation)	No. 95-2-0076
)	
Petitioner,)	COMPLIANCE
)	ORDER AND
vs.)	FINDING OF
)	INVALIDITY
PACIFIC COUNTY,)	
)	
Respondent.)	
_____)	

On October 30, 1990, Pacific County elected to be governed by the provisions of the Growth Management Act (GMA). In the adopting resolution the County agreed and consented to “implement all requirements and provisions of the Growth Management Act” and recognized that its ability to so comply was “predicated upon adequate funding from the Department of Community Development.” Since that time Pacific County and its cities have received over one-half million dollars of state funding . Some \$250,000 of that funding has gone directly to Pacific County. We note that Pacific County has recently taken a different, and perhaps better approach towards discharge of its GMA responsibilities.

Early in the GMA process Pacific County established a technical advisory committee for resource lands and critical areas. The committee was comprised of county and city officials, various state agency members, citizen associations and private land owners. In February 1992, the committee submitted a report which included definitions, findings, policies and designations for resource lands and critical areas. On April 21, 1992, the Board of County Commissioners (BOCC) adopted the report as their “designation policies” by resolution #92-047. No development regulations providing protection for critical areas nor conservation of resource lands were ever adopted.

The designation policies defined interdunal wetlands as follows:

“Interdunal wetlands are those seasonally and temporarily flooded areas from between dunes along the ocean areas of the Long Beach Peninsula and the north beach at North Cove and Grayland. Interdunal wetlands may have characteristics of salt spray tolerant, emergent vegetation as well as emergent marsh vegetation. These areas eventually change into scrub-shrub and forested wetlands as the interdunal vegetation is replaced and dominated by woodlot vegetation.”

Findings concerning the interdunal wetlands were adopted as follows:

1. Interdunal wetlands are located between Cape Disappointment and Grays Harbor/Pacific County line, on the north coast. Generally, interdunal wetlands include most of the county’s beach environment.
2. These wetlands occur due to seasonal, winter inundation impoundment in the lowland swales between the primary and secondary dune. Water in the interdunal areas dissipates in the summer months. These wetland are non-tidal.
3. *Environmental impacts to interdunal wetlands most commonly occur as a result of single-family residential construction and accompanying access road or driveway. Increased roadway construction across interdunal lowlands has caused an increase in seasonal water levels, often impairing wintertime access to residential areas.*
4. Interdunal wetlands dissipate wave energy during flooding events and generally *serve as an unaltered recharge area for fresh water aquifers*. Due to the dynamic beach environment, interdunal areas also protect existing development from erosion and wind-blown sand.
5. *The interdunal wetland areas of Pacific County are an environmentally unique resource of local and state-wide significance.*
6. *The interdunal wetlands provide specialized wildlife habitat areas.*

(Italics supplied)

On June 13, 1995, the BOCC adopted ordinance #95-0, primarily an amended zoning code ordinance, adding a new section entitled “SECTION 30 Seaview Dunal Restricted Residential

District” (SDR-1). The intent of Section 30 was to “permit moderate density single family residential development on upland areas located within the inter-dunal (*sic*) environment.”

The ordinance permits single family residences and accessory uses including private detached accessory living quarters on lots as small as 15,000 sq. ft. if served with sewer and public water. The single family residence and potential accessory units must each be a minimum of 1,000 sq. ft. Other permitted accessory uses include private garages, recreational storage buildings, private greenhouses, woodsheds, tool sheds, swimming pools, tennis courts, etc. The only protection afforded to the interdunal wetlands by this ordinance is a requirement for a minimum 10-ft. setback from any delineated wetland area.

In August 1995, the petitioners challenged the failure of Pacific County to adopt necessary requirements of the GMA. Among the issues presented was a failure of the County to adopt resource land and critical area development regulations to comply with RCW 36.70A.060. Pursuant to a stipulation between the parties, the County agreed to a timeline for having the critical area and resource land development regulations adopted not later than May 31, 1996. We concurred in the timelines established between the parties, by order dated December 5, 1995, and extended the full 180-day period allowable under the GMA for the County to comply.

No development regulations were adopted by the May 31, 1996, deadline agreed to by the County. At the July 18, 1996, compliance hearing the County agreed that it still was not in compliance with the Act and at least 90 to 100 more days would expire before an ordinance would be adopted. The original deadline for Pacific County to comply with the GMA for development regulations to protect critical areas and conserve resource lands was September 1, 1991.

The land area covered by SDR-1 is generally a rectangle bounded on the north by the municipal limits of Long Beach and on the south by the municipal limits of Illwaco. The eastern boundary is generally the existing developed area between Long Beach and Illwaco and the western boundary is an area 150 ft. east of the mean high-tide level of the Pacific Ocean. The 150 foot strip is currently zoned “Conservation District”. That district is designed to "protect and conserve environmental values". The 150 foot westerly strip is covered with the few remaining sand dunes

of Western Washington.

The County conceded that its failure to adopt development regulations to protect critical areas and conserve resource lands for almost five years past the legislative deadline constitutes a failure to comply with the GMA. As requested by Petitioner, and mandated by RCW 36.70A.330 (3), we are required to address the issue of whether this failure to comply substantially interferes with the goals of the Act and thus should be found invalid.

We express no opinion as to whether Ordinance #95-0 complies with the GMA. That Ordinance was never the subject of a petition within 60 days of publication after adoption and thus we have no jurisdiction to decide compliance with the GMA. However, under the provisions of RCW 36.70A.330 and .300 we have the authority and the obligation to decide if continued use of SDR-1 (Section 30 of Ordinance #95-0) substantially interferes with the goals of the Act since no development regulations to protect this critical area have been adopted.

RCW 36.70A.020(9) and (10) provide:

“(9) Open space and recreation. Encourage the retention of open space and development of recreational opportunities, *conserve fish and wildlife habitat*, increase access to natural resource lands and water, and develop parks.

(10) Environment. *Protect the environment* and enhance the state’s high quality of life, including air and *water quality*, and the *availability of water*.”

(Italics supplied)

As noted in the resource lands and critical areas designation criteria adopted by the County, the environmental impacts to this interdunal area “most commonly occur as a result of single-family residential construction...”. This area serves as an “unaltered recharge area for fresh water aquifers...” and is “an environmentally unique resource of local and state-wide significance.” The area also provides “specialized wildlife habitat” locations. The allowance of single-family residences, accessory uses and recreational uses under the provisions of SDR-1 when no development regulations to protect these critical areas have been adopted substantially interferes

with goals 9 and 10 of the Act.

Petitioner's request to invalidate parts of the Conservation District and Shoreline Master Program as applied to the interdunal area is denied. Petitioner has failed to meet its burden of proof of demonstrating substantial interference with the goals of the Act.

The specific findings of fact and conclusions of law required by the GMA are attached and incorporated herein by reference.

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

SO ORDERED this 31st day of July, 1996.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

William H. Nielsen
Board Member

Les Eldridge
Board Member

Nan A. Henriksen
Board Member

FINDINGS OF FACT

1. Pacific County has not adopted development regulations by September 1, 1991, to protect critical areas.
2. The Seaview Interdunal Area is located generally between the municipal boundaries of

Long Beach and Ilwaco.

3. The area is an environmentally unique resource of local and state-wide significance.
4. The area provides aquifer recharge and wildlife habitat values.
5. The allowance of single-family residences and accessory uses in the area without critical area development regulations would lead to substantial adverse environmental impacts.

CONCLUSION OF LAW

1. The Board has jurisdiction over the parties and subject matter of this case.
2. Use of SDR-1 in the Seaview Interdunal Area under these conditions substantially interferes with Goals 9 and 10 of the Act.