

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

SEAVIEW COAST CONSERVATION)	
COALITION, a Washington non-profit)	No. 96-2-0010
corporation,)	
Petitioner,)	FINAL DECISION
)	AND ORDER
v.)	
)	
PACIFIC COUNTY; BOARD OF COUNTY)	
COMMISSIONERS FOR PACIFIC COUNTY,)	
its legislative body; and WASHINGTON STATE)	
DEPARTMENT OF ECOLOGY,)	
)	
Respondents.)	
_____)	

In 1996, the Legislature amended the Growth Management Act (GMA, Act) to expand the jurisdiction of a Board. RCW 36.70A.280(1)(a) now directs that a Board shall have jurisdiction over cases that allege:

"That a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW;"

On October 30, 1990, Pacific County elected to plan under the Act by a resolution adopted in conformance with RCW 36.70A.040(2).

The Pacific County Shoreline Master Program (PCSMP) was approved by the Department of Ecology (DOE) on April 8, 1975. § 23 of the PCSMP established a building setback line 200 ft. easterly of the "seashore conservation line" established in 1968. The north-south boundaries of the area in questions are more particularly described in *Seacoast Conservation Coalition v. Pacific County*, WWGMHB #95-2-0076 (Order July 31, 1996) (*Seacoast I*) and generally lie north of the Ilwaco city limits and south of the Long Beach city limits.

On June 14, 1995, the Pacific County Department of Community Development submitted an environmental checklist in support of an amendment to the building setback line provisions. Generally the amendment was described as moving the building setback line 200 ft. westward (toward the ocean) to a point generally coinciding with the 1968 seashore conservation line.

On July 5, 1995, the responsible office for Pacific County entered a determination of non-significance (DNS) on the setback amendment proposal. On July 6, 1995, the County planning commission considered the proposed amendment. At the conclusion of the hearing the planning commission recommended approval of the amendment with a modification to move the line another 100 ft. westward.

Pursuant to RCW 90.58.090(1) an amendment to a Master Program shall become effective only after approval by DOE. On October 18, 1995, DOE held a hearing in Ilwaco concerning the proposed amendment. Subsequent to the hearing DOE prepared a list of issues raised during the comment period. The issues were responded to by Pacific County on November 20, 1995. DOE then issued a responsiveness summary and findings and conclusions on December 1, 1995, and approved the amendment on January 12, 1996.

On May 3, 1996, a petition was filed in our office challenging the amendment. A prehearing conference was held on June 21, 1996, and a Prehearing Order entered July 2, 1996. On July 19, 1996, an Order establishing the record was entered. The Hearing on the Merits was held September 26, 1996, in Ilwaco. DOE participated in the prehearing conference and the motions concerning the record. DOE appeared at the Hearing on the Merits to respond to questions from the Board, but did not file a brief nor participate in the argument.

Among the variety of issues argued by Petitioner was compliance with RCW 43.21C (SEPA). Petitioner contended that the entry of a DNS was clearly erroneous.

In *Clark County Natural Resources Council v. Clark County*, WWGMHB #92-2-0001, we established that our SEPA review standard for a DNS was the clearly erroneous test. We reaffirmed that holding in *Mahr v. Thurston County*, WWGMHB #94-2-0007. We review the record here under that standard.

In response to the DNS the State Department of Fish and Wildlife (DFW) sent a letter on June 28, 1995, to Pacific County (Ex. 24). DFW pointed out 6 matters that did not appear to be adequately covered by the checklist and DNS. The letter noted that not all areas of the Long Beach Peninsula were continuing to accrete, but were beginning to show signs of severe erosion particularly in the "Beards Hollow" area. DFW further noted that the area covered by the amendment was subject to flooding, provided a valuable groundwater recharge and storage area and that residential development in the area would lead to damage to the interdunal system, WFD was concerned that residential development could lead to decertification of "one of the most productive populations of razor clams in the state" from potential failure of septic systems and additional environmental stresses.

On July 7, 1995, DOE responded to the DNS by letter (Ex. 28). DOE listed 6 matters of concern including that the "project is viewed as having potential significant impacts to the coastal environment" and that the application did not "appear to adequately evaluate the extent of all the significant impacts that are likely." DOE observed that a review of the June 14, 1995, environmental checklist failed to indicate what the impacts would be and failed to provide appropriate information "to assess the impacts to dune and wetland modification which inevitably accompanies new construction".

During the planning commission hearing of July 6, 1995, issues concerning the need to review placing a new north-south road west of Highway 103 in the area were presented. Issues concerning the impact of development in the area and its relationship to traffic and emergency access were raised. Traditional issues concerning the marsh area setbacks and elevations were raised. Issues from the "Water Quality Board" were presented. Staff responded to these issues by stating that their initial process included addressing all issues concerning development in this area at one time but that "a request had been received to review the setback issue." That "request" was the only reason this setback line had been singled out. All of these issues were continued to the September meeting. The record does not reveal whether any of them were ever addressed.

Staff also indicated that the Master Program amendment was interrelated with a proposed zoning amendment to allow residential development in the interdunal area (see *Seacoast I*). Staff did not

indicate why the interrelated changes were not presented at one time instead of by separate hearings. Presumably the zoning change was, or would be, subject to a DNS.

The record also reflected that the County did not address issues concerning access, utilities, fill for septic sewage systems nor the cumulative impact that those necessary residential aspects would impose on the area covered by the amendment. This failure is particularly notable because most of the lots were to be developed as single family residences and would likely be exempt from environmental and Master Program review. As noted in *Seacoast I*, the County itself has recognized through Resolution 92-047 that this area is environmentally unique, provides specialized habitat areas and provides aquifer recharge functions.

The record also raised issues concerning the erosion/accretion controversy, whether stabilization measures to prevent single family residences from being covered by sand or exposed to wave action would impact or damage fish and wildlife habitat and whether the area was a geologically hazardous area because of prior history of tsunami events and potential future events. The record reflected that the County's response to the environmental issues was to ignore them totally, disregard them as being unsubstantiated or acknowledge their existence but postpone any analysis until a later unspecified time.

Under the test enunciated in *Norway Hill v. King Cy*, 87 Wn.2d 267 (1976) (*Norway Hill*) and *Levitt v. Jefferson Cy*, 74 Wn. App. 668 (1194) a finding that the DNS is clearly erroneous can only occur after review of the entire record in light of the policy of SEPA, and then only if we are left with a "definite and firm conviction that the agency made a mistake". *Norway Hill* also requires that the record reflect "actual consideration of environmental factors." WAC 197-11-060 (4)(c)(d) requires that environmental consideration of a non-project nature include a "range of probable impacts". We have a firm conviction that a mistake was made in the County's DNS decision. This record is replete with unanswered questions about the environmental impacts of this proposal, the segregated nature of the consideration of MP and zoning amendments and the likelihood that such analysis if not done now will never be. Pacific County is not in compliance with the GMA as it relates to SEPA by the DNS that was entered in this case.

Petitioner requested that we direct the County to prepare a full environmental impact statement

prior to reconsideration of the amendment to the MP. We do not have such authority. RCW 36.70A.300 directs that we remand this matter to the County upon a finding of non-compliance with regard to MP amendments. It is up to the County to determine what the appropriate analysis is and what action to take subsequent to this Order. Our finding here is that based upon this record the DNS does not comply with SEPA as it relates to the SMA.

If the County decides to pursue a MP amendment along these lines it must begin with a proper environmental analysis within 120 days of the date of this Order. Compliance will be achieved by the procedural completion of a different SEPA analysis. Substantive compliance with SEPA and/or SMA and/or GMA must await a new petition after completion of a new MP amendment process under RCW 90.58.090(1).

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

So ordered this 22nd day of October, 1996.

William H. Nielsen
Presiding Officer

Les Eldridge
Board Member

Nan A. Henriksen
Board Member