

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

J.L. STOREDAHL & SONS, INC.,	)	RAYMOND	)	
and MERRY WOODSIDE, husband and wife,	)		)	No. 96-2-0016
and VIRGINIA I. WOODSIDE, a single person,	)		)	
	)		)	ORDER ON
Petitioners,	)		)	DISPOSITIVE
	)		)	MOTION
v.	)		)	
	)		)	
CLARK COUNTY, WASHINGTON,	)		)	
	)		)	
Respondent.	)		)	
	)		)	
and	)		)	
	)		)	
FRIENDS OF THE EAST FORK (FOEF),	)		)	
	)		)	
Intervenor.	)		)	
<hr style="border-top: 1px solid black;"/>				

In *Achen v. Clark County*, #95-2-0067, we concluded that Clark County Comprehensive Plan (CP) Policy 4.5.8, which prohibited mining in the 100-year floodplain areas of the east fork of the Lewis River, was not supported by sufficient analysis. Specifically, we noted that in the past Clark County had relied on existing policies and regulations concerning the State Environmental Policy Act and the Shoreline Management Act (SMA) as fulfilling the Growth Management Act (GMA, Act) requirements. We further observed that the record contained a wealth of information concerning the availability of high quality gravel resources within the 100-year floodplain but no analysis of why the County decided to prohibit mining in that area and rely upon alternative sources. We remanded the issue to Clark County to provide the analysis or make changes to the policy.

The initial challenge had been made by both Mr. and Mrs. Woodside (Woodside) as owners of property within the 100-year floodplain and Storedahl and Sons, Inc. (Storedahl), as lessees of the mineral rights owned by Woodside. The remand was one of a host of remand issues. On

December 6, 1995, as part of an order on reconsideration we denied Petitioners' request to invalidate the prohibition.

On April 11, 1996, the Clark County planning commission held an extensive public hearing concerning the mining question. After listening to the evidence, the planning commission recommended retaining the policy. The recommendation was later adopted by the Board of County Commissioners. New petitions were filed May 22, 1996, by Storedahl and on June 18, 1996, by Woodside. Subsequently, Friends of the East Fork (FOEF) was allowed to intervene. The County and Intervenor's motions to dismiss were denied. We determined that the petitions constituted a challenge to the County's compliance in the *Achen* case. Because the issues presented were distinct and able to be segregated from the myriad of other compliance issues, and for ease of identification, the original petition number was retained.

Thereafter, Clark County filed a dispositive motion which was set for a hearing September 11, 1996. On the morning of the hearing the parties announced that a stipulated agreement had been reached to allow a further remand to Clark County for the specific purpose of resolving the issues in the case through other avenues. Pursuant to that agreement, the dispositive motion hearing and the hearing on the merits were stricken. A stipulated order was entered on November 7, 1996.

The alternate avenues of settlement came to a dead end. Pursuant to the stipulation, Storedahl requested the matter be rescheduled for a hearing. We thereafter scheduled the matter for hearing on the merits on July 16, 1997, established the issues in the case, and required petitioners' opening brief to be filed by June 16, 1997. The order further provided that any dispositive motions would need to be refiled and provided a deadline for such filing. Approximately one week before Petitioners' opening brief was due a telephone conference was held wherein the attorneys for all three parties requested that the July 16, 1997, hearing be converted to a dispositive motion hearing and that any issues remaining be rescheduled for a later time. We acceded to this request as an accommodation to the parties and because each attorney stated that his respective client was aware of the request, knew the reasons therefore, and agreed that a delay in rendering a final decision until after the dispositive motion was appropriate. The motions hearing was held telephonically on July 16, 1997. For the reasons set forth below we deny Petitioners' motion.

The parties have made numerous contentions regarding how this case fits within the requirements established by ESHB 1724 effective July 23, 1995, (Regulatory Reform Act, RRA). The Legislature amended RCW 90.58.060 (RRA § 305) which changed the requirements for reviewing and adopting the guidelines of RCW 90.58.020 (SMA policies). Once those guidelines are adopted local governments are required to amend their shoreline master programs (SMP) within 24 months (RRA § 305).

In an entirely different section of the RRA, the Legislature amended the GMA (§ 104) to provide that:

- (1) In shoreline areas the goals and policies of RCW 90.58.020 became a goal of the GMA;
- (2) The goals and policies of the local SMP were to be considered an element of the CP;
- (3) All other portions of the SMP were to be considered a part of the total local government development regulations (DRs); and
- (4) Future SMP adoption or amendment needed to follow the process set forth in the SMA, rather than the process set forth in the GMA. (RCW 36.70A.480)

RRA § 108 (RCW 36.78.280) provided additional jurisdiction in GMA planning counties for Growth Management Hearings Boards (GMHB) to review DOE approval or disapproval of initial adoption or amendments to the local SMP. *San Juan County and Yeager v. DOE*, #97-2-0002. RRA § 109 amended RCW 36.70A.290(2) and authorized petitions to a GMHB to include a challenge to determine whether a CP, DR, or amendment adopted under GMA complies with the SMA. RRA § 110 and § 112 (RCW 36.70A.300, .330) provided jurisdiction to review that initial determination in a subsequent compliance hearing since the goals and policies of the SMA and the local SMP are now part of the requirements of GMA under RCW 36.70A.480(1). *Seaview Coast Conservation Coalition v. Pacific County*, #96-2-0010.

We conclude that under the provisions of RCW 36.70A.070, SMP elements of a CP and the DRs must be internally consistent with all other aspects of the CP and DRs adopted by local government. This is true whether or not a local government has formally incorporated its SMP into its CP and DRs. RCW 36.70A.480(1).

In answer to the variety of contentions of the parties about this legislative scheme, we hold that

the clear legislative language set forth above is intended to apply from the July 23, 1995, effective date of the RRA. Thus, it applies to the controversy here. We have jurisdiction to determine the issues of consistency of the GMA CP and DRs with the SMA and the local SMP. In order to comply with the GMA, consistency must be achieved by a local government. The 24-month period set forth in RCW 90.58.080 relates to guidelines to be adopted under RCW 90.58.060. There exists no legislative intent to apply that grace period to the GMA amendments found in RRA § 104, § 108-110, and § 112. The language in RCW 36.70A.480 does not mean, as contended by Petitioner, that the SMA preempts local government GMA planning in the shorelines areas. Rather the Legislature meant exactly what it said: the SMA and the local SMP are to be considered "an element" of the CP.

In reviewing the limited record authorized in the dispositive motion process, we do not find an inconsistency between CP Mineral Policy 4.5.8, Clark County Code (CCC) 18.330, and the Clark County SMP. The SMP merely provides that if mining is permitted within the urban, rural and/or conservancy environments, a conditional use permit must be obtained. CCC 18.330.030 directs that a shoreline combining district (comprised of shorelines of the state) be overlaid with the established zoning district with which it is "combined." The same uses specified in the zoning district are authorized, subject to the additional shoreline permit requirements. CP Mining Policy 4.5.8 does not establish a "zoning district" that allows mining within the 100-year floodplain. The assertion of Petitioner that the SMP allows mining within the 100-year floodplain while the CP prohibits it is not shown by this record. That being the case, we deny Petitioners' dispositive motion.

So ORDERED this 31st day of July, 1997.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

---

William H. Nielsen  
Board Member

---

Les Eldridge  
Board Member

---

Nan A. Henriksen  
Board Member