BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

CLARK COUNTY NATURAL RESOURCES COUNCIL, and VANCOUVER AUDUBON SOCIETY, and LOO-WIT GROUP SIERRA CLUB, Non-Profit Corporations, COALITION FOR ENVIRONMENTAL RESPONSIBILITY AND ECONOMIC SUSTAINABILITY, an unincorporated association, RURAL CLARK COUNTY PRESERVATION ASSOCIATION, a non-profit corporation,	)	No. 96-2-0017
Petitioners,	)	ORDER ON DISPOSITIVE MOTIONS
v.	)	
CLARK COUNTY, CITY OF VANCOUVER, and CITY OF CAMAS,	)	
Respondents.	)	

After the prehearing order of July 19, 1996, the City of Vancouver filed a motion for a ruling in its favor concerning issues 3, 4, 6, and 7. At the same time Clark County filed a motion for a ruling in its favor concerning issue 5.

VANCOUVER

The Vancouver dispositive motion concerned the readoption of its Sensitive Lands Ordinance #M-2992 (SLO). The specific issues addressed concerned whether or not the fish and wildlife habitat, aquifer recharge area, steep slope and flood-plains aspects of the SLO were subject to challenge under the facts presented here. Vancouver first enacted the SLO on March 2, 1992, and notice of adoption was published April 23, 1992. No challenge of the SLO was filed within the period set by RCW 36.70A.290 (60 days after publication).

During the hearing on the merits in *Achen v. Clark County* WWGMHB #95-2-0067 (*Achen*)

Vancouver conceded that it had not reviewed the SLO for consistency with its comprehensive plan as required by RCW 36.70A.060. A remand to correct that deficiency was part of the Final Order in *Achen*.

Vancouver decided to treat the review for consistency with full public participation rather than having merely a staff and planning commission/City Council review. Vancouver further determined that the appropriate method to allow for significant public participation was to advertise the matter as a public hearing for readoption of the SLO. After hearings and public involvement, the ordinance was readopted on March 18, 1996, without change. A petition challenging the substantive aspects of the SLO was thereafter timely filed. The consistency issue for critical areas for Vancouver is being addressed in the remand portion of *Achen*.

As we noted in *North Cascades Audubon Society v. Whatcom County* WWGMHB #94-2-0001, critical area development regulations (DRs) are distinguished from resource lands DRs because critical area DRs are not "interim" in nature. Nothing in RCW 36.70A.060 requires local governments to amend or alter a previously adopted critical area ordinance at the time of adoption of the comprehensive plan or implementing DRs. Initial resource lands DRs remain in effect only until adoption of implementing DRs.

Under the specific facts of this case, we conclude that jurisdiction does not exist to substantively review the SLO readopted by Vancouver on March 18, 1993. The process undertaken by Vancouver to ensure consistency between the SLO and the comprehensive plan was limited to that consistency issue. No substantive review of the SLO by Vancouver took place. To hold that the simple act of readoption, under these circumstances, grants jurisdiction to substantively review an ordinance first adopted in 1992, and not challenged within the time frames provided by the Act, would amount to form over substance. One of the linchpins of the Growth Management Act involves the concept of speedy review and finality. That concept prevails over a hyper-technical interpretation of the Act to find jurisdiction under these facts.

CLARK COUNTY

Clark County moved for a ruling in its favor as to issue 5 concerning adoption of an aquifer

recharge area ordinance. In *Achen* we observed that beyond the wetlands ordinance adopted in 1992, no other critical area DR had been adopted by Clark County. As part of a remand order we determined that in order for Clark County to comply with the Act it was required to:

> "Adopt development regulations that protect critical areas in addition to the existing wetland ordinance and review them for consistency with the comprehensive plan".

Unbeknownst to us, or at least unobserved, the County did have an ordinance concerning aquifer recharge areas first adopted in 1991. Even though the County filed a motion for reconsideration on a number of issues, it did not bring to our attention this existing aquifer recharge area development regulation.

As part of its remand process the County amended the original aquifer recharge ordinance on January 16, 1996. The County likewise adopted and/or amended other ordinances in late 1995 and early 1996 as part of its remand process. All of those ordinances, as well as subsequently approved ordinances designed to complete the remand process, were readopted under ordinance #1996-05-01 on May 2, 1996. This appeal was timely filed after that ordinance adoption.

Because the new petition intertwined critical area ordinance and archeological preservation issues from the *Achen* decision and involved ordinances that were newly adopted we determined that the most efficient method of proceeding would be to segregate these new issues and the remand issues from the remand hearing in the *Achen* case and allow those issues to be dealt within this cause number. That amalgamation did not apply to the review of the wetlands ordinance for consistency with the adopted comprehensive plan and implementing development regulations, which remained in the *Achen* remand process.

During the August remand hearings in *Achen*, the County produced evidence of many ordinances that were adopted incrementally during late 1995, early 1996 and then combined with the May 2, 1996, comprehensive development regulation. During the remand hearing, no challenge was made by the County concerning those other ordinances and no distinction appears between those and the aquifer recharge area ordinance.

We recognize that issues concerning the scope of compliance hearings versus the necessity for

new petitions are not well defined in the Act. None of the Boards have had much opportunity to provide guidance concerning when jurisdiction exists or does not exist under facts similar to those presented here. Nothing in the Act directs that challenges to ordinances incrementally adopted during the full 180 day remand period are to be dismissed unless a new petition is filed each and every time an ordinance is adopted. We do not believe that efficient use of resources from petitioners, local governments and/or Boards would be enhanced by the adoption of a ruling requiring such constant petition filings. Draft rules are being formulated at this time and hopefully will provide sufficient clarity to resolve these types of issues.

We deny Clark County's motion under the facts and circumstances presented here.

ORDER

Vancouver's motion as to its participation in issues 3, 4, 7 and 8 is granted. Clark County's motion regarding issue 5 is denied.

Dated this 12th day of September, 1996.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

_____
William H. Nielsen
Board Member

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Nan A. Henriksen
Board Member

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Les Eldridge

Board Member