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

ISLAND COUNTY CITIZENS' GROWTH MANAGEMENT COALITION, et al., 0023c	)	
	)	No. 98-2-
	)	
Petitioners,	)	COMPLIANCE
	)	ORDER RE:
v.	)	CLINTON AND
	)	FREELAND
	)	
ISLAND COUNTY,	)	
	)	
Respondent,	)	
And	)	
	)	
RESOURCE GROUP, INC., et.al,	)	
	)	
Intervenors	)	

In the June 2, 1999, final decision and order (FDO) for this case we said at p. 42:  
...“However, areas of more intensive rural development are not “mini-UGAs” or a rural substitute for UGA, and they are subject to the limitations of RCW 36.70A.070(5)(d)(iv).”

Later, on p. 54 we said:

**“Clinton and Freeland RAIDS**

The County stated that it has not yet resolved the issue of whether the Clinton and Freeland RAIDs should be designated non-municipal UGAs. The County “recognizes that Clinton and Freeland have many urban characteristics and that it may be appropriate to designate these areas as urban growth areas.” County’s Response Brief, Ex. 7 (Resolution C-169-98 (CPP #1)). The County committed to subarea planning to determine potential UGA boundaries, urban land use designations, and capital facilities needs. *Id.*

We agree with the County’s apperception – Clinton and Freeland have many urban characteristics, including many small lots spread over a large area and significant commercial development. These RAIDs look less like limited areas of more intensive rural

development and more like urban growth. The only difference between these RAIDs and an UGA is the absence of planning and funding for necessary urban services. *See* RCW 36.70A.030(14)(f).

We find that the Clinton and Freeland RAIDs, with their current boundaries and allowed densities, are not limited areas of more intensive rural development, but constitute non-municipal urban growth. The designation of these RAIDs allows the development of a new pattern of low-density sprawl and permits urban growth outside of a designated UGA. **Designation of the Clinton and Freeland RAIDs does not comply with the Act. We do not now find substantial interference with the goals of the Act. However, if the County does not complete its non-municipal UGA analysis and designate these areas as UGAs in a timely manner, we will reconsider the need for a finding of invalidity.**

Lastly, in the order section at pages 77 and 78 we said:

“In order to achieve compliance the County must do the following within 180 days of the date of this order (November 30, 1999):....

9. Reassess the designations, densities and uses allowed in Freeland and Clinton RAIDs. Either (a) do proper analysis, make provision for urban services and designate as non-municipal UGAs; or (b) restrict boundaries, uses and densities allowed.”

In response to a motion from the County to clarify we stated in the July 8, 1999, Order on Motions for Reconsideration and Clarification at pp. 1, 2, and 3:

**“County’s Motion to Clarify and Supplement the Record**

The County stated in its motion:

At page 52 (*sic*) of its Decision, the Board concludes that Clinton and Freeland RAIDs do not comply with the GMA, and expects the County to complete its UGA analysis for these areas in a “timely manner”. The Order at page 74 (*sic*) restates the decision. However, the order relating to Freeland and Clinton is included in a listing of actions that must be completed by November 30, 1999. The County cannot make its UGA decisions for Freeland and Clinton within this time period.

The Decision recognizes that the County is completing UGA studies for Freeland and Clinton. Adopted Countywide Planning Policies require the County to complete its analysis and reach a decision on UGA status by the second annual review of the Comp Plan (December 1, 2000). Record 4394. The County has created two subarea Planning Committees; hired an engineering consultant to, among other things, design a sewer plan for each

area; and is partway through its work plan. The subarea Committee proposals for land use and capital facilities, in the form of Plan and DR amendments, are scheduled to be completed so that the Planning Commission can review and make its recommendations during the County's second annual Plan review. Chapter 16.26 ICC requires the Board to reach its decision on annual review amendments by September so that any changes become effective by December."

"The Coalition responded in Part:

The Island County Citizens' Growth Management Coalition (Coalition) opposes the request of Island County to have the Board give the County until December of the year 2000 (18 months) for the County to make a decision as to whether Clinton and Freeland should become UGAs.

Under the County's proposal urban development will continue to vest in Clinton and Freeland until December of the year 2000 without any provision or requirement to ultimately provide urban services for this development. If the County decides in December 2000 that Clinton and Freeland should not become UGAs the County will have not made any provision to reduce the density, uses, and size of the current RAIDs.

The current regulations will allow the development of a new pattern of low-density sprawl between now and December 2000 (and beyond if UGAs are not established by the County)."

"We modify number 9 at p.78 of the FDO to add the following schedule:

9. Reassess the designations, densities and uses allowed in Freeland and Clinton RAIDs. Either (a) do proper analysis, make provision for urban services and designate as non-municipal UGAs; or (b) restrict boundaries, uses and densities allowed."

The required schedule will be:

(a) The County must take interim action to preclude the development of a new pattern of low-density sprawl and the permitting of urban growth without provision of urban services while the remainder of the process is being completed.

November 30, 1999

March 1, 2000

(b) Subarea Committee's work completed:

June 1, 2000

(c) Planning Commission Recommendations completed:

December 1, 2000"

(d) The County takes final action to comply with this portion of the Order.

It was our intent in that FDO modification to require the County to restrict boundaries, uses and densities on an interim basis while the County completed its analysis of the feasibility of designating Freeland and Clinton as urban growth areas (UGAs), thereby restricting urban sprawl while allowing the County extra time to complete its work.

On November 10, 1999, the County notified us that Ordinance #C-119-99 had been adopted to address noncompliance determination No. 9 and requested that we determine that compliance had been achieved for that remand issue.

Pursuant to RCW 36.70A.330 we held a compliance hearing on March 9, 2000, to determine whether the County is now in compliance regarding FDO No. 9.

We wish to thank the County's representative for his thorough and thoughtful presentation at the compliance hearing. We also wish to commend the subarea planning committees for the excellent work they are doing. Nothing said in this order is meant to discourage or devalue that effort. In fact, it is our hope to encourage the County to support the subarea committees' efforts to find ways to provide urban infrastructure and services to these south island economic hubs.

Designating these areas as nonmunicipal UGAs, providing the required urban facilities and services and reserving a portion of the area within them for industrial development would greatly assist the County in reaching its goal of creating much needed new job opportunities.

The County has adopted excellent design guidelines and maintenance of rural character provisions in section 17.03 of the Island County Code. The County has also reassessed and revised the densities and uses allowed within the Freeland and Clinton RAIDs to those densities and intensities which existed before 1990 within each of the RAIDs. Although these densities and intensities are more urban than would be found in a “normal” RAID, under this record we do not find that the County was clearly erroneous as to the densities and intensities provided for by this Ordinance.

The County contended that it had reassessed the outer boundaries of the RAIDs and concluded from its reassessment that the Freeland and Clinton boundaries for both residential and mixed use RAIDs complied with its adopted criteria and RCW 36.70A.070. Therefore, no changes were made to the outer boundaries.

In an October 11, 1999 letter and at the October 18, 1999 hearing Charlie Stromberg, Chair of the Coalition, reminded the Board of County Commissioners (BOCC) what our orders regarding Clinton and Freeland had said. Mr. Stromberg further stated in part:

“The unstated assumption of the County Ordinance #C-119-99 is that unincorporated UGAs in Freeland and Clinton will be established and that therefore densities must be high enough not to preclude or interfere with the future UGA. This is the type of approach that the County is taking to protect the areas around the Langley and Oak Harbor UGAs.

However, there is no assurance that Unincorporated UGAs will be approved. What is evident in both the Freeland and Clinton Advisory Committees is a low level of enthusiasm for locally funded districts to provide urban services. The County has stated that it does not intend to pay for these urban services.

Planning for Clinton and Freeland as if UGA status is a certainty is leading the County to confound the requirements of the GMHB order which is: NOT allowing urban sprawl development beyond proper RAID boundaries until (and if) the decision to create UGAs has been made and funding mechanisms identified.

To the Coalition, the County is trying to have its cake and eat it too. It is assuming eventual UGA status (and allowing growth to continue under that assumption) but providing none of the funding or leadership to support this assumption. The worst case the Coalition sees is that urban-type development will continue and then a year from now the decision will be made to stay a RAID.

To comply with the GMHB orders, the boundaries, designations, densities and uses allowed in the Freeland and Clinton RAIDs should be reduced to proper RAID standards by the November 30, 1999 GMHB deadline. The time frame allowed by the GMHB can then be used to do the detailed planning and decision-making needed, either to confirm RAID status or to move toward UGA status. If urban sprawl is allowed to continue under conditions that are not allowed in RAIDs, however, the 1 year period for interim regulations PLUS the added six months is way too long a time for more intense development to be allowed in this oversized RAID. One year has already passed since the original approval of the Plan, so the total time for low density sprawl to occur – unless prevented by interim ordinances -will be two and one-half years. This is unacceptable.”

Mr. Stromberg’s comments on the record did an excellent job of summarizing the requirements of the FDO and Order on Reconsideration. We can see from the record that the County has taken action to ensure that interim development will not thwart designation of nonmunicipal UGAs. However, the County has not taken the required action to restrict the outer boundaries to Growth Management Act (GMA, Act) compliant RAID boundaries while the decision to create UGAs is being made and funding mechanisms identified. Nothing has been done to preclude current undeveloped large lots on the periphery of these over-sized RAIDs from being converted from truly rural to “suburban” and to preclude new urban development outside properly designated UGAs and without provision for urban services.

The County’s request for more time to complete its assessment of UGA status for Clinton and Freeland reminds us of when local governments asked the Legislature in 1993 to give them more time to complete their comprehensive plans (CPs) under GMA. The Legislature responded by giving more time but requiring the designation of interim urban growth areas (IUGAs) within six months. These IUGAs were to be tightly drawn and all development outside was to be limited to truly rural densities while ongoing homework on the CP and implementing development

regulations were completed. Our response to the County's request was much the same, but six years after the Legislative mandate was enacted.

RCW 36.70A.070(5)(d)(iv)&(v)(A) requires:

(iv) A County shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The County shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address:

(A) The need to preserve the character of existing natural neighborhoods and communities

(B) Physical boundaries such as bodies of water, streets and highways, and land forms and contours

(C) The prevention of abnormally irregular boundaries, and

(D) The ability to provide public facilities and public services in a manner that does not permit low-density sprawl.

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions in this chapter.

We stated quite clearly in the FDO that, given the above requirements, the maps and exhibits in the record did not support the County's designation of outer logical boundaries for the Clinton and Freeland RAIDs. We also stated that those boundaries must be restricted. The remand record shows that the County merely went back and reexplained how the previously designated logical outer boundaries fit the County's criteria and therefore made no changes. This is not the point. Whether or not those boundaries fit the County's criteria for RAIDs, they do not meet the requirements for logical outer boundaries for limited areas of more intensive rural development (LAMIRD) under 36.70A.070(5)(d)(iv). If the current boundaries are not restricted and subsequently the County does not designate these areas UGAs, the Act's requirement to confine LAMIRDs (RAIDs) would be thwarted and more suburban and urban development would be allowed to occur in rural areas years after the Act forbid such expansion of sprawl.

The purpose of LAMIRDs is to acknowledge and *contain* preexisting areas of more intensive rural development. The FDO clearly stated at p. 78:

“Ensure that boundaries contain and constrain limited areas of more intensive development; reflect boundaries based on built environment in 1990; do not include post 1990 development if that provides an opportunity for inclusion of other undeveloped lands and therefore allows development of a new pattern of low-density sprawl.”

The maps in the record and those provided at the compliance hearing show that the County’s chosen boundaries for both Clinton and Freeland extend beyond GMA- compliant logical outer boundaries whether based on the built environment in 1990 or even 2000.

We might not be as concerned about these over-inclusive boundaries except for the great disparity between the current level of development on the periphery of these RAIDs and potential density and intensity allowed. In the case of Clinton and Freeland, the allowed residential density (3 du/acre) is very high for non UGA development. The Act does allow for limited infill at this suburban or urban density if that is the pre-1990 development pattern within those specific RAIDs. However, planning for expansion of development at this density is not allowed by the Act. The same is true for the periphery of the oversized commercial RAIDs. There are some small scale commercial buildings in those areas. However, including those areas in a RAID that allows them to be developed at the intensity of the core of those RAIDs (14,000 and 27,000 sq. ft. buildings) would definitely allow new urban growth outside properly designated UGAs.

At the compliance hearing the County agreed that the FDO was correct in stating that Clinton and Freeland look more like small cities or UGAs than LAMIRDs. The County further contended that it made good planning sense for Clinton and Freeland to be rural trade centers for Central and South Whidbey Island. Given this record, and the constraints on Langley and Coupeville’s ability to handle much additional growth, we do not disagree with the County. However, under the Act, the further expansion of Clinton and Freeland must be done under the requirements for UGAs which would ensure the provision of necessary urban facilities and services to accommodate responsible growth.

We share the County’s and intervenor’s desire to attract growth away from other more rural areas of Central and South Whidbey into Clinton and Freeland. It appears from the broader record in

this case that these RAIDs (even when restricted) and the other RAIDs in Central and South Whidbey have more than sufficient potential to provide for the desired growth while planning continues for infrastructure to accommodate additional urban growth in properly delineated and served UGAs.

At the compliance hearing the County asked us to determine if the Clinton and Freeland RAIDs comply with the Act in addition to its original request that we determine that compliance had been achieved for remand No. 9. The County provided us with maps (Record #4985 and 4986) with two overlays; one showing water lines now in place and the other delineating areas on the periphery of the RAIDs. These areas were labeled with numbers for the commercial RAIDs and letters for the residential RAIDs. So as not to get into a morass of legal lot descriptions, we will deal with these areas by the letter and number designations provided by the County.

## ORDER

### Clinton RAIDs

We find the inclusion of the following areas within the Clinton RAIDs not in compliance with the Act: **1, 2, A, B, C, D, E and everything south of E. Other parcels may also need to be removed to achieve logical outer boundaries once these areas are removed from the RAIDs. In area C, there is one parcel east of Anderson Road crosshatched on the County's overlay. That parcel should remain in the RAID in order to use Anderson Road as the logical westerly boundary of that portion of the residential RAID.**

### Freeland RAIDs

The boundaries chosen by the County for commercial and residential RAIDs may be appropriate as UGA boundaries if provision of urban facilities is found to be feasible. However, these boundaries are much too inclusive to be considered as confining a limited area of more intense rural development. **We find the inclusion of the following areas within the Freeland RAIDs not in compliance with the Act: All land south of Highway 525 and all land north of the southern boundary of the "Holly Farm." Even with those reductions, the area remaining in the RAID has more potential for new urban development than would normally be allowed**

**under the Act.**

Remand number 9

The County has partially complied with 9(a). However, oversized RAID boundaries continue to allow a new pattern of urban growth without provision of urban services while the remainder of the planning process is being completed. **Therefore, the County is not in compliance as to 9 (a). It is too early to determine compliance on 9(b) through (d) since those tasks are not yet completed.**

If the County has not brought itself into compliance with 9(a) by June 30, 2000, an invalidity hearing will immediately be scheduled. Invalidity would ensure that the option of confined LAMIRDs would still be available if provision of urban infrastructure is delayed. Once the boundaries have been restricted and the development of a new pattern of urban growth without provision of urban services precluded, meeting the completion dates of (b) through (d) need not be so crucial.

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 22<sup>nd</sup> day of March, 2000.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Nan A. Henriksen  
Board Member

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Les Eldridge  
Board Member

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