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

ISLAND COUNTY CITIZENS' GROWTH	)	
MANAGEMENT COALITION, et al.,	)	No. 98-2-0023c
	)	
Petitioners,	)	COMPLIANCE
	)	HEARING
v.	)	ORDER
	)	
ISLAND COUNTY,	)	
	)	
Respondent,	)	
And	)	
	)	
RESOURCE GROUP, INC., et.al,	)	
	)	
Intervenors	)	
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In the final decision and order (FDO) in this case, we determined that Island County's comprehensive plan (CP) and development regulations (DRs) for rural agriculture and certain rural areas of more intensive development (RAIDs) were invalid. Island County adopted Ordinance C-105-99 to address the agricultural invalidity determination. Two ordinances, C-95-99 and C-110-99, were adopted to address the determination of invalidity for RAIDs.

On October 12, 1999, the County filed a motion to rescind invalidity determinations 1 and 3 of the FDO (p. 80) and find compliance on FDO determinations 1, 2, 3, 4, 7, and 8 (p. 77 and 78) as they applied to rural agriculture and RAIDs. Copies of ordinances C-105-99, C-95-99, and C-110-99 were attached to the motion.

A compliance hearing was held on November 3, 1999.

Although Whidbey Environmental Coalition Network initially notified us that they would be challenging the County's compliance motion regarding rural agriculture, that challenge was later

withdrawn. We have independently reviewed the record and **find that Island County Ordinance C-105-99, as it pertains to Rural Agriculture, complies with the Growth Management Act (GMA, Act).**

Island County Citizens' Growth Management Coalition (Coalition) contested only two RAIDs. They requested that we maintain invalidity and noncompliance for the low-density peninsula attached to the Bayview residential RAID and the "connecting larger lots" in the West Beach RAID.

### **Burden of Proof**

RCW 36.70A.320(4) states that a local government which is subject to a determination of invalidity:

...“has the burden of demonstrating that the ordinance or resolution it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of this chapter under the standard of RCW 36.70A.302 (1).”

The statute is clear that the burden is on the local government to show that it no longer substantially interferes with fulfillment of the goals of the Act.

Thus, the County must show it no longer substantially interferes with the goals of the Act as to the two contested areas in the Bayview and West Beach RAIDs. Once, or if, that burden is met the Coalition assumes the burden of showing continued noncompliance.

In its November 2, 1999, response brief, the Coalition stated:

“Consistent with the October 14, 1999 Notice of Hearing (Notice), the Island County Citizens' Growth Management Coalition (Coalition) informed this Board on October 21, 1999 that it was contesting the lifting of invalidity on the Bayview and West Beach RAIDs. The Notice provides that Island County (County) was required to file its argument as to why invalidity should be lifted by October 28, 1999. The County

has the burden of proof regarding the lifting of invalidity. Coalition Op. Br. at 2. By failing to provide opening argument by October 28, 1999 regarding the lifting of invalidity, the County has failed to meet its burden and so invalidity on the Bayview and West Beach RAIDs must be retained.”

At the compliance hearing the County responded that the rationale for its action was set forth in Ordinance C-95-99 and in the Findings adopted by Ordinance C-110-99 which were attached to its October 12, 1999 motion to rescind.

The Coalition replied that these ordinances and the County’s record were devoid of rationale (pertaining to appropriate criteria for RAIDS under GMA) for inclusion of the contested properties in these RAIDS.

### **Bayview RAID**

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As to the Bayview RAID, the Coalition in its October 28, 1999, brief stated:

“The new Bayview RAID as established by the Ordinance continues to extend beyond the logical outer boundary of the existing area of more intensive rural residential development. The Board should find that the boundaries of this RAID will not minimize and contain the existing areas or uses, but would allow the development of a new pattern of low-density sprawl and, consequently, substantially interfere with the fulfillment of GMA goal (2).

The Coalition is concerned solely with the portion of the new Bayview Residential RAID that is located primarily in the East half of Sec. 18, Twp. 29N., R.3E. and extends south to include the first row of lots that are the most northerly lots in the east half of Sec. 19, Twp., 29N., R.3.E. This area is bordered on the west by a boundary of Diking District No. 1, on the north by Highway 525 and on the east by Bayview Road. This contested area is shown herein in Attachment 7 with the black diagonal lines laid upon three maps from the amended zoning atlas. The amended zoning atlas maps are from Exhibit 4571. This area is somewhat more than a quarter mile wide and one mile long (approximately 170-acre). See Exhibit 4571 (Attachment 7). There are approximately 14 parcels and portions of another 15 parcels included in this contested areas. Id. It appears that the smallest lot inside this contested area is over 2.5-acres in size and the average lot size is over six acres. Id. Yet the County

proposes suburban sprawl in this contested area with a density of 3 units per acre. Exhibit 4571, ICC 17.03.075. The boundaries of this RAID will not minimize and contain the existing areas or uses, but would allow the development of a new pattern of low-density sprawl.

Referring back to the Useless Bay/Bayview Future Land Use map in Attachment 1 to this brief, it is seen that in 1998 the County's implementing regulations zoned most of the contested land as Rural Agriculture and Rural Forest. Now the County proposes development at 3 units per acre. The aerial photo in Attachment 3 to this brief (and the original photo supplied previously to the Board as Exhibit 9008) show that only a handful of houses existed in this rural area in 1990. Certainly this extension of the Bayview Residential RAID one mile to the north to include a peninsula of low density rural lands creates a boundary that is not in compliance with the requirements of RCW 36.70A.070(5)(d)(iv) which prohibits lands from being included in RAIDs that 'extend beyond the logical outer boundary of the existing area.'"

The Coalition went on to explain how the County had failed to address in the Ordinance or in its record how the inclusion of the contested land met any of the criteria for establishing logical outer boundaries under RCW 36.70A.070(5)(d)(iv).

The County responded at the compliance hearing that the contested lands are a connection between the rest of the residential Bayview RAID and the Bayview Commercial RAID. Further, the commissioners wanted an area of more dense housing near the Bayview Commercial Center. The western boundary corresponds to the drainage and diking district boundary and separates the wetlands from the uplands.

We have carefully read Ordinances C-95-99 and C-110-99 and the record provided by the County. Neither provides an appropriate GMA rationale for the inclusion of this land in the Bayview RAID. The Findings simply recite what was done but do not address why this land was included, given the requirements of the GMA. The record is also lacking in this regard. **The County has failed to meet its burden of demonstrating that these ordinances, as they pertain to the contested land in the Bayview RAID, will no longer substantially interfere with the fulfillment of the goals of the Act.**

## West Beach RAID

In the “Invalidity Findings of Fact and Conclusions of Law Pursuant to RCW 36.70A.302 (1)(b)” portion of the FDO we found:

“73. The West Beach RAID consists of mostly developed subdivisions in the southern part of the RAID connected by a strip of larger, waterfront lots along West Beach Road to an undeveloped subdivision (Sea View) in the northern part of the RAID. We find that, because of the inclusion of the connecting larger lots and the undeveloped Sea View plat, the boundaries of this RAID will not minimize and contain the existing areas or uses, but would allow the development of a new pattern of low-density sprawl and, consequently, substantially interferes with the fulfillment of GMA goal (2). The designation of the West Beach RAID, including the applicable portions of the CP, DRs, and zoning maps, does not comply with the Act and is declared invalid.”

In Ordinance No. C-95-99 the County made no change to the West Beach RAID. The County provided us with a detailed map of the Sea View Plat showing that it is substantially developed and appropriate for inclusion in a residential RAID. Based on this new information the County asked us to lift invalidity on this RAID and find it in compliance.

The Coalition responded that the County had provided no analysis for the inclusion of “the connecting large lots” that we had also found invalid. Since the County had the burden of proof to show that the inclusion of the larger lots should not be found invalid and had added nothing to the record to meet this burden, the Coalition asked us to retain invalidity on these connecting larger lots.

The Coalition further contended that:

(1) This ¾-mile long barbell handle of low-density rural lots created a boundary that is not in compliance with the requirements of RCW 36.70A.070(5)(d)(iv) which prohibits lands from being in RAIDs that “extend beyond the logical outer boundary of the existing area.”

(2) The County has not addressed the four items in RCW 36.70A.070(5)(d)(iv) that are required to be addressed in establishing logical outer boundaries.

(3) The County has not met the written record requirements of RCW 36.70A.070 (5)(a) in its inclusion in the West Beach RAID of this ¾-mile long barbell handle at a density of two units per acre.

(4) This mid-density residential zone does not preserve the character of the existing low-density rural neighborhood now within these connecting lands.

(5) The thin strand of connecting lots should not be included in this RAID because it will encourage high-density development in a geo-hazard area where threatened plants are located.

For these and other reasons the Coalition asked us to find the handlebar of the Bayview RAID in continued invalidity.

The County responded that no one had raised concerns about the West Beach RAID prior to the adoption of C-95-99. In fact, the County received a letter from Dean Anell (Ex. 4633) on behalf of the Coalition, stating no problem with this RAID. The only negative comment was received from DOE after adoption of C-95-99. Since the Coalition did not complain during the County process, they should not be allowed to argue for continued invalidity before us.

As to substance, the County responded that only one parcel in the handle of the barbell is over 5 acres in size. If left out of the RAID, 18 lots will be nonconforming lots. Further, it makes no sense to separate the West Beach Community into two RAIDs. Also, the County's critical area ordinance will protect the bluffs even if they are included in the RAID.

The Coalition replied that after a finding of noncompliance the County must comply with the FDO and the GMA whether or not there is a citizen complaint. Our FDO clearly expressed concern about the inclusion of the large connecting lots. The County left them in the RAID without providing evidence in the record showing why. Thus, the County failed to meet its

burden.

We find the Coalition's arguments to be persuasive. We normally do not give much weight to argument of petitioners who have not made their case at the local level. However, the FDO clearly invalidated the connecting larger lots and the County has added nothing to the record to convince us that inclusion of these lots should not have been invalidated.

The record does contain new evidence that the Sea View Plat is substantially developed and appropriate for inclusion in a residential RAID. **We therefore lift the determination of invalidity from the Sea View Plat. However, the remaining lots previously invalidated remain invalidated.**

### CONCLUSION

We commend Island County for the great strides it has made to come into compliance on the Rural Agriculture and RAIDs issues determined invalid in the FDO. **Except for the two relatively small RAID areas that remain under invalidity the County's request that invalidity determinations 1 and 3 be rescinded is granted. The County's motion is also granted as pertains to compliance, except for the two contested areas in the Bayview and West Bank RAIDs.**

Since the County has not sustained its burden as to lifting invalidity in those contested areas, we need not discuss the other noncompliance issues raised by petitioners. RCW 36.70A.290(1). We have confidence that the County and petitioners will be able to work those issues out while the County reviews the configuration of the Bayview and West Bank RAIDs.

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 23<sup>rd</sup> day of November, 1999.

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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William H. Nielsen  
Board Member