BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

ISLAND COUNTY CITIZENS' GROWTH MANAGEMENT COALITION, et al.,	)	No. 98-2-0023c
Petitioners,	)	ORDER ON MOTIONS FOR RECONSIDERATION AND CLARIFICATION
v.	)	
ISLAND COUNTY,	)	
Respondent,	)	
and	)	
RESOURCE GROUP, INC., et al.,	)	
Intervenors.	)	

On June 2, 1999, we issued a Final Decision and Order (FDO) in the above entitled case. We received motions for reconsideration from Island County Citizens' Growth Management Coalition (Coalition) and from Whidbey Environmental Action Network (WEAN) and the Coalition. We also received motions for clarification from the County (County) and from Intervenor Bayview Cash Store, LLC; Bayview F & G, LLC and Bayview Farm & Garden, Inc. (Bayview Corner Owners). All parties were given an opportunity to respond to these motions.

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
(b) Subarea Committee's work completed:	March 1, 2000
(c) Planning Commission Recommendations completed:	June 1, 2000
(d) The County takes final action to comply with this portion of the Order.	December 1, 2000

The County also supplied many documents reflecting the County's work schedule and activities attached to the Declaration of Phil Bakke. The declaration and attached documents are admitted to the record.

Bayview Corner Owners' Motion to Clarify

We also received a motion to clarify from the Bayview Corner Owners requesting clarification of our FDO with respect to the Bayview Rural Center RAID located within the Useless Bay/Bayview RAID. The Bayview Corner Owners sought clarification that the commercial Bayview Rural Center is not affected by our invalidation of the surrounding Useless Bay/Bayview RAID. The owners asserted that argument made before us almost exclusively dealt with the residential Useless Bay/Bayview RAID.

The County stated that it believed the invalidity determination affected the Useless Bay/ Bayview Residential RAID and did not affect the Bayview mixed use Rural Center RAID.

The Coalition disagreed. It believed that our Order invalidated the entire Useless Bay/ Bayview RAID including the commercial area.

It was our understanding that the Bayview Rural Center was a mixed use Rural Center

RAID in its own right that happened to be surrounded by the Useless Bay/Bayview Residential RAID. When questioned, the County referred to that mixed use RAID and others as "RAIDs within RAIDs". In the FDO, we reviewed the Useless Bay/Bayview residential RAID. We did not review the Bayview Rural Center RAID, because insufficient argument and evidence were presented by petitioners to justify review. Consequently, the Bayview Rural Center RAID is not affected by the determination of invalidity of the Residential Useless Bay/Bayview RAID.\

Coalition's Motion for Reconsideration

The Coalition's motion for reconsideration requested that we:

1. strike a paragraph addressing mining in the rural area from the FDO;

2. clarify the FDO to confirm that Holmes Harbor was addressed as part of the Freeland RAID;

3. find the County out of compliance with the GMA regarding uses and standards in mixed-use and NR zones;

4. expand the label above Finding of Fact 13 to include the Rural zone;

5. invalidate the Freeland and Clinton RAIDs; and

6. reconsider four specific RAIDs.

Request to Strike Paragraph

The Coalition requested that we strike the following paragraph from the FDO:

> Finally, the Coalition claimed that rural character is not protected by the allowance of long-term mining operations everywhere in the rural area. The County responded that this complaint should be rejected because it was not within the issues framed by the amended prehearing order. We agree with the County. The Coalition's issue statements were extensive and detailed. Mining concerns, however, were not even mentioned.

FDO at 42. The Coalition argued that this issue was included in a settlement extension and should not be addressed in the FDO. However, the accuracy of the statement in the FDO is not questioned – mining concerns were not part of the issues properly presented to the us for resolution. The Coalition's request to strike this paragraph is denied.

Request for Clarification of the FDO for the Freeland RAID

The Coalition requested that we confirm that its finding of non-compliance of the Freeland RAID also applies to Holmes Harbor. As pointed out by the Coalition and not rebutted by the County, Holmes Harbor is a subarea of Freeland and, as such, is included within the Freeland RAID which we found does not comply with the GMA.

Request to Reconsider Uses and Standards in Mixed-Use and NR Zones

The Coalition asserted that we misinterpreted the law and the facts in the finding regarding uses and standards in mixed-use and NR zones and requested that we reconsider our FDO. The Coalition presented no new argument to persuade us that we misinterpreted the law or the facts in the FDO. The Coalition's motion for reconsideration of this issue is denied.

Request to Amend the Label Preceding Finding of Fact 13

The Coalition requested, without objection by the County, that we re-label Finding of Fact 13 to include application to the Rural zone. The Coalition's request is granted. Appendix II, Findings of Fact (Page A.II-3) of the FDO is amended as follows:

> **Rural Forest and Rural Agriculture:**
> 13. …
>
> is amended to read
>
> **Rural Forest, Rural Agriculture, and Rural Zone:**
> 13. …

Request to Invalidate Freeland and Clinton RAIDs

The Coalition requested that we reconsider its FDO and invalidate the Freeland and Clinton RAIDs. In the FDO, we declined to find these RAIDs invalid, but determined to "reconsider the need for a finding of invalidity" if the County fails to "complete its non-municipal UGA analysis and designate these areas as UGAs in a timely manner." FDO at 55. We have modified our Order on this issue in this decision. If Island County does not abide by requirement 9(a) by November 30, 1999, we will reconsider the need for a finding of invalidity. The Coalition has not persuaded us to amend this determination at this time. The Coalition's motion for

reconsideration of this issue is denied.

Request to Reconsider Specific RAIDs

The Coalition requested that we reconsider compliance and invalidity for the following RAIDs: Lost Lake, Saratoga Shores, Livingston Bay, and Elger Bay. The Coalition has presented no new argument to persuade us to reconsider its determination regarding these RAIDs. The Coalition's motion for reconsideration of this issue is denied.

WEAN and Coalition's Motion for Reconsideration

WEAN's motion for reconsideration requested that we:

(1) remand the amendment to the definition of wetlands regarding hydrological connectivity to allow full public and agency comment and review;

(2) invalidate ICC 17.02.107H., "functionally isolated buffers";

(3) amend the Findings of Fact regarding rural densities in the rural area;

(4) amend the Order and Findings of Fact to clarify that the County must either designate in the comprehensive plan all areas listed by the Washington Natural Heritage Program or provide a reasoned analysis of why they should not be designated;

(5) amend the Order and Findings of Fact to clarify that the County must include criteria in the comprehensive plan to designate all native species and habitats present in Island County that need protection to avoid fragmentation, including species imminently threatened with extinction from Island County, or provide a reasoned analysis of why they should not be designated; and

(6) amend the Order and Findings of Fact to require the County to revise all the adopted stream buffers to assure that they are adequate to protect and maintain aquatic resources and terrestrial wildlife functions.

WEAN claimed that five of these requested changes were needed due to clerical error or oversight in the FDO. WEAN also claimed that two should be changed due to an error of law.

We stated in the FDO that we had carefully considered all claims and responses before reaching our decisions. Those were not empty words. All but one of WEAN's claimed

clerical errors were not oversights, but carefully considered decisions. WEAN disagreed with those decisions and presented preferred solutions. We may also prefer those solutions, however, our role is not to require preferred solutions but to determine if the County's choices comply with the Act.

In all but request 4, the Order embodied our intention and is supported by the record. We find no errors of law.

As to request 4 regarding habitats listed by the Washington Natural Heritage Program, we did intend that all were to be reviewed, not just coastal bluffs and prairies. Those should have been used as examples, not the total requirement.

We therefore amend the Order section at p.78, item 12 to read:

12. Either designate high quality terrestrial and wetland ecosystems inventoried by the Washington Natural Heritage Program or provide a reasoned analysis of why they should not be designated.

We also amend Finding of Fact 35 at p. AII-7 to read:

35. The record showed that high quality terrestrial and wetland ecosystems inventoried by the Washington Natural Heritage Program, have not been listed as FWHCAs.

Board-Identified Clerical Error

Finding 42 at p. AII-9 should read:

42. Stanwood, in Snohomish County, is, in effect, Camano Island's UGA. It would make no sense to create an UGA on Camano Island to improve the 70/30 ratio.

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

So ORDERED this 8th day of July, 1999.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

_____ Nan A. Henriksen

Board Member

_____ Les Eldridge

Board Member

_____ William H. Nielsen

Board Member