

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

EVERGREEN ISLANDS, et al.,)
) No. 00-2-0046c
Petitioners,) (General Issues)
)
v.)
COMPLIANCE)
) ORDER
SKAGIT COUNTY,)
)
Respondent,)
)
)
AFFILIATED HEALTH SERVICES, et al.,)
)
Intervenors)
_____)

In the February 6, 2001 final decision and order (FDO) we told the County to do the following in order to comply with the Growth Management Act (GMA, Act):

“In order to comply with the Act, the County must take the following actions by the deadlines specified:

- (1) If the aggregation requirement is not reinstated, the County must adopt other measures that prevent incompatible development and uses from encroaching on designated resource lands and their long-term viability. This includes not only the estimated 4,000 substandard lots within NRL lands, but also those in rural areas near designated NRL lands. Further, the County must ensure by appropriate regulations that in allowing development of substandard lots, it does not allow development which will cumulatively require urban services in rural areas and which fails to reduce low-density sprawl. If compliance is not achieved within 90 days, we will consider Petitioners’ request for invalidity.
- (2) If the County wishes to retain its urban reserve provision in the CaRD DRs, it must limit that option to lands near UGAs which it has determined to be the best areas for future urban growth. The process to determine future urban growth suitability must include consultation with the impacted municipalities, SEPA review of alternatives, and full public participation. These actions must be taken within 180 days.
- (3) Set a specific timetable for, and firm commitment to, the timely completion of

the Fidalgo Sub-Area Plan. This plan must be completed and found to be compliant before the CaRD urban reserve development or any other increase in density are allowed to occur on the Island. The specific timetable and scope of work must be developed and supplied to us within 90 days.

(4) Within 90 days, change the amendments to CP Policy 7A-4.29a to make it clear that annexations are to occur as soon as feasible within municipal UGAs to facilitate the efficient phasing of urban infrastructure and development.

(5) Set much more strict parameters for rural signage to protect the rural character of the County and conform with RCW 36.70A.030(14)(a) and .070(5)(c). If compliance is not achieved within 90 days, we will consider Petitioners' request for invalidity.

(6) Within 90 days, remove the uses allowed in NRLs listed in SCC 14.16.400, .410, .420, and .430, which do not comply with the Supreme Court's opinion of the proper interpretation of the Act's goals and requirements in the *Soccer Fields* case.

(7) Either clarify SCC 14.16.400(2)(e) to prohibit commercial composting of municipal yard waste on pre-existing concrete pads within the Ag-NRL lands, or adopt safeguards to ensure that this non-agricultural use is temporary, priority is always given to agricultural uses, no leaching of toxins from urban yard debris is allowed to contaminate the agricultural soil, and ensure that additional truck traffic will not interfere with ongoing agricultural uses. If compliance is not achieved within 90 days, we will consider Petitioners' request for invalidity.

(8) Within 30 days, adopt current city DRs for enforcement within municipal UGAs. Changes to city ordinances must be adopted promptly in the future to ensure enforceability of the updated municipal codes.

(9) Within 180 days, adopt maps or some other clear mechanism to identify greenbelts and open space areas within UGAs and open space corridors within and between UGAs.

(10) Within 30 days, repeal the changes made to the Big Lake rural village in the 2000 CP and UDC. Complete a Big Lake sub-area planning process according to CP 4A-7.8, analyze the proposed boundary expansion according to the criteria in RCW 36.70A.070(5)(d), and consider the potential of this area for Mount Vernon UGA expansion before re-expanding the boundary or allowing greater densities for the Overlake Golf Course. If repeal of the changes is not made within 30 days, we will invoke invalidity.

(11) Within 90 days, amend SCC 14.01.020(1) to be similar to the County's proposed amendment at p. 58 of its response brief.

(12) Within 90 days, amend SCC 14.04.020 to be similar to the County's proposed amendment at p. 59 of its response brief.

- (13) Within 180 days, take action to ensure that all elements of the CP use the same population projections and 20-year planning period.
- (14) Within 90 days, place a minimum density note on the UGA map for Concrete consistent with other UGA maps.
- (15) Any findings of noncompliance in previous sections of the FDO are incorporated by reference.”

A compliance hearing was held October 30, 2001, in Mount Vernon, Washington. All three Board members were present. Representing Skagit County was John Moffat; representing Friends of Skagit County (FOSC) and Gerald Steel was Gerald Steel; and representing the City of Anacortes was Ian Munce. In this decision we will refer to FOSC and Gerald Steel as FOSC.

At the hearing we admitted Exhibits 629 and 632-639 to the record.

Presumption of Validity, Burden of Proof, and Standard of Review

Ordinance amendments made in response to a finding of noncompliance are presumed valid. RCW 36.70A.320.

The burden is on Petitioners to demonstrate that the action taken by Skagit County is not in compliance with the requirements of the Growth Management Act. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), we “shall find compliance unless [we] determine that the action by [Skagit County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” In order to find the County’s action clearly erroneous, we must be “left with the firm and definite conviction that a mistake has been made.” *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

Remand Actions Challenged by No One

No one challenged the compliance of three remand actions taken by the County. After reviewing the record, we find the County in compliance as to remand issues:

- (7) Amendment of SCC 14.15.400(2)(e) relating to commercial composting;
- (11) Amendment of SCC 14,10.020(i) relating to variances to public works road

standards; and

(13) Correct CP population projection numbers to achieve internal consistency.

Remand Issues Deferred to April 2, 2002 Compliance Hearing

The parties agreed to defer the following remand issues to the April 2, 2002 compliance hearing:

(6) Uses allowed in natural resource lands;

(9) Mapping of greenbelts and open space corridors; and

(12) Amendment of the SCC 14.04.020 definition of “side setback.”

Remand Issues Which County Appealed to Court and Adopted No Amendments to Address Findings of Noncompliance

1) If the aggregation requirement is not reinstated, the County must adopt other measures that prevent incompatible development and uses from encroaching on designated resource lands and their long-term viability. This includes not only the estimated 4,000 substandard lots within NRL lands, but also those in rural areas near designated NRL lands. Further, the County must ensure by appropriate regulations that in allowing development of substandard lots, it does not allow development which will cumulatively require urban services in rural areas and which fails to reduce low-density sprawl. If compliance is not achieved within 90 days, we will consider Petitioners’ request for invalidity.

2) If the County wishes to retain its urban reserve provision in the CaRD DRs, it must limit that option to lands near UGAs which it has determined to be the best areas for future urban growth. The process to determine future urban growth suitability must include consultation with the impacted municipalities, SEPA review of alternatives, and full public participation. These actions must be taken within 180 days.

10) Within 30 days, repeal the changes made to the Big Lake rural village in the 2000 CP and UDC. Complete a Big Lake subarea planning process according to CP 4A-7.8, analyze the proposed boundary expansion according to the criteria in RCW 36.70A.070(5)(d), and consider the potential of this area for Mount Vernon UGA expansion before reexpanding the boundary or allowing greater densities for the Overlake Golf Course. If repeal of the changes is not made within 30 days, we will

invoke invalidity.

The County stated in its October 15, 2001 Brief at p. 4:

“The County did not adopt any specific development regulation amendments on Issues (1) Lot aggregation, (2) “urban reserve” CaRD, (10) repeal of changes to Big Lake Rural Village. As described in detail below, the County believes, upon more thorough briefing and review, this Board will determine that existing Code provisions on lot aggregation and CaRD are, in fact, in compliance with GMA requirements.”

Both FOOSC and Anacortes objected to the County’s attempt to reargue the lot aggregation, urban reserve Conservation and Reserve Development (CaRD), and Big Lake Rural Village issues in a compliance hearing contending:

- 1) Those issues were briefed, argued and decided by the Board and are properly before Superior Court on the County’s appeal;
- 2) In effect, the County is arguing for reconsideration of the Board’s decision;
- 3) Requests for reconsideration were required to be filed within 10 days of the FDO. That deadline has long since passed; and
- 4) The County must remain in continued noncompliance because no action was taken during the remand period to bring itself into compliance.

We agree with FOOSC and Anacortes that this is not the appropriate time to reconsider our previous decision on these issues. We therefore find continuing noncompliance as to remand issues (1), (2), and (10).

The issue before us is FOOSC’s request for invalidity findings and sanction recommendations on these issues.

As to the sanction requests FOOSC stated:

“On each of the above three remand items, the County has not even considered actually changing its CP or DR to comply with this Board’s FDO. There have been no staff reports, no workshops or public hearings before the planning commission, no public hearings before the Board of County Commissioners (BOCC), and no ordinance or resolution adopted that addresses those remand items. This lack of response from the

County reflects the attitude of a BOCC where two of the three current members took office for the first time just shortly before the FDO was issued. While the three County Commissioners know that they do not have a stay of this Board's order, they have nevertheless decided to not respond on these remand items.

FOSC requests that this Board send a clear message to the newly constituted Board of County Commissioners. This Board should find that sanctions are appropriate when a County does not make a serious effort to comply with this Board's orders. This Board should find that the County has not made a serious effort to comply with its FDO on these three items. FOSC recommends that this Board issue a compliance order with an automatic recommendation to the governor for economic sanctions for Skagit County if the County does not adopt an interim or permanent ordinance that seeks to bring the County into compliance with the FDO on these three issues, within thirty days of the issuance of the compliance order.”

The County simply responded that FOSC's request for an “automatic” recommendation of sanctions was not supported by GMA nor the record.

We will allow the County 90 more days to adopt interim measures to comply with the remands on these issues. If the County does not make a serious effort to comply within that extension of time, we will reconsider FOSC's request for a recommendation of sanctions.

As to FOSC's invalidity requests, we will deal with these three issues one at a time.

Remand Issue 1 – Invalidity Request Regarding Aggregation

(1) If the aggregation requirement is not reinstated, the County must adopt other measures that prevent incompatible development and uses from encroaching on designated resource lands and their long-term viability. This includes not only the estimated 4,000 substandard lots within NRL lands, but also those in rural areas near designated NRL lands. Further, the County must ensure by appropriate regulations that in allowing development of substandard lots, it does not allow development which will cumulatively require urban services in rural areas and which fails to reduce low-density sprawl. If compliance is not achieved within 90 days, we will consider Petitioners' request for invalidity.

FOSC requested that we enter an order of invalidity regarding lot aggregation stating:

- (1) The County's definitions and terms “Lot of Record” and “Lot of Record,

Legal” (where the County eliminates lot aggregation) in the 2000 CP and UDC should be found automatically invalid 30 days after the Board issues its compliance order if the County does not take action that the Board finds, on its face, is in compliance with the Board’s order on Item (1) within that 30 days. If the County takes no action within 30 days, the automatic invalidity would apply to the term “lot of record certification” in SCC 14.06.090(1)(b). This would have the effect of preventing permit applications from being found complete until the aggregation issue is resolved and invalidity is lifted on the term “lot of record.”

(2) This order of invalidity should apply to new single-family residences on existing lots that would otherwise be exempt by RCW 36.70A.302(3)(b)(i). The Board should specifically provide that to protect the public health, it is necessary to include in invalidity those permits otherwise exempt by RCW 36.70A.302(3)(b)(i).

The County responded:

(1) FOSC’s request for in invalidity should be rejected, as it far exceeds anything necessary to address this concern and is in excess of the Board’s statutory authority.

(2) FOSC’s proposed solution would prevent any development application from being found complete and ready for processing. This would shut down all permit processing throughout the County until this limited lot aggregation concern is resolved.

(3) FOSC provided no evidence of substantial interference with the goals of GMA, an absolute requirement for a determination of invalidity. RCW 36.70A.302(1)(b).

(4) The record actually supports a finding that lot aggregation under the new ordinance may, in fact, result in fewer lots being developed than was permitted under the previous system.

(5) The Legislature expressly limited invalidity authority not to apply to single-family development on existing lots. RCW 36.70A 302(3)(b)(i). The only exemption to this limitation is if the Board determines there is a public health and safety risk.

(6) FOSC has provided no evidence of a public health and safety risk. The new lot aggregation provisions specifically address public health and safety issues by using the septic code requirements to determine lot “buildability” rather than mere patterns of ownership without regard to ability to meet septic code requirements. This new

approach better addresses public health and safety issues than did the old code approach.

(7) Existing County Code prohibits extension of urban services. FOSC's unsupported assertion that such extensions might occur is also unsupported by the express language of the code and the evidence in the record.

FOSC replied:

(1) Non-vested substandard-sized lots of record that were aggregated by County ordinances into larger lots on or before October 5, 1993, (the date that IUGA boundaries were established) may not be dis-aggregated after October 5, 1993, by the County allowing these non-vested substandard-sized lots of record to be considered viable building sites when dis-aggregation would result in vesting of urban lots outside UGAs. Urban-sized lots vested before October 5, 1993, are not subject to this potential invalidity order.

(2) Vesting of urban-sized lots in and around natural resource lands, when these lots were previously not vested, is in itself incompatible with continued natural resource land uses.

Board Discussion and Conclusion About FOSC's Invalidity Request On Remand Issue 1

In the February 2001 FDO, we told the County that if it did not achieve compliance within 90 days, we would consider Petitioners' request for invalidity. We gave the County the option to either reinstate the aggregation requirement or adopt other measures that would prevent incompatible development and uses from encroaching on designated resource lands. Those alternative measures were also required to preclude development of substandard lots which cumulatively would require urban services in rural areas and continue low-density sprawl. Eight months later the County had taken no action to achieve compliance on this issue.

We remind the County that in the FDO 97-2-0060c, we quoted the County's statement at p. 48 of its brief 1:

"The County agrees with FOSC's note that the CP definition of 'legal lot of record' is incorrect and inconsistent with the definitions contained in Skagit County Code. That

drafting error can and will be corrected. The County has no intent of circumventing the current lot aggregation requirements found in Ordinance 16559 as evidenced by the fact that Ordinance 16559 did not contain the same definition change challenged in the CP.”

We are concerned that the County has forgotten that promise.

We are further concerned that the County has taken no interim action to comply with our remand in this case while its appeal goes through review by the Courts. As time passes and the County issues more permits on substandard-sized lots outside of UGAs, the threat to natural resource uses and rural character continues.

We agree with the County that FOSC’s specific request for invalidity may be excessive. We will not invoke invalidity at this time due to lack of evidence in the record of substantial interference. However, if the County has not taken interim action to comply within 90 days, we would entertain a new request for invalidity from FOSC if it were accompanied by evidence of substantial interference to support it.

Remand Issue 2 – Urban Reserve CaRD

(2) If the County wishes to retain its urban reserve provision in the CaRD DRs, it must limit that option to lands near UGAs which it has determined to be the best areas for future urban growth. The process to determine future urban growth suitability must include consultation with the impacted municipalities, SEPA review of alternatives, and full public participation. These actions must be taken within 180 days.

FOSC did not request a finding of invalidity for the urban reserve CaRD revisions countywide under this issue. However, it did request such invalidity under Remand Issue (3). We will deal with that request under Issue (3).

Remand Issue 10 - Invalidity Request Regarding Big Lake Rural Village

(10) Within 30 days, repeal the changes made to the Big Lake Rural Village in the 2000 CP and UDC. Complete a Big Lake sub-area planning process according to CP 4A-7.8, analyze the proposed boundary expansion according to the criteria in RCW 36.70A.070(5)(d), and consider the potential of this area for Mount Vernon UGA expansion before re-expanding the boundary or allowing greater densities for the Overlake Golf Course. If repeal of the changes is not made within 30 days, we will invoke invalidity. (Emphasis added)

FOSC requested that we follow through with that promised invalidity since we had not acted after 30 days as stated in the FDO.

The County responded that under the Supreme Court opinion in Association of Rural Residents v. Kitsap County (ARR) 141.Wn.2d 185 (2000), this regulation, since it was not amended before the expiration of the remand period, is no longer in effect. The County further stated that, since the noncompliant CP amendment adding acreage had lapsed and those areas could not be developed to the densities allowed under the noncompliant provision of Ordinance #17938, no new development is allowed that would substantially interfere with the goals of GMA. Therefore a finding of invalidity is not warranted.

FOSC replied:

“This Board has the responsibility for determining if a new finding of invalidity should now be entered regarding the Big Lake Rural Village. RCW 36.70A.330(4). The Board was convinced at the hearing on the merits that invalidity was justified but gave the County 30 days to avoid invalidity. FDO at 49. The Board stated, ‘If repeal of the changes is not made within 30 days, we will invoke invalidity.’ Id. The thirty days have passed, the County has taken no action and now this Board should invoke invalidity.

The County raises the issue as to whether under ARR, the changes made to the Big Lake Rural Village are still in effect. As this Board will recall, the 1997 CP designated this area as an independent UGA. This Board found that the UGA designation did not comply with the Act. Abenroth v. Skagit County, WWGMHB No. 97-2-0060c (FDO, Jan. 23, 2998) at 22-23; 98. In response to that FDO, the County changed the Big Lake UGA to a Big Lake Rural Village with the same boundary and with a 5-acre density on the Overland (sic) Golf Course. See the Big Lake map in Ex. 512 attached to the Co. Br. The Big Lake map in Ex. 512 shows the areas added to the Rural Village by Ordinance No. 17938 (Ex. 364). This Board should clarify that the changes it referred to in the FDO at 48-49 included the additional area added to the Rural Village by Ordinance No. 17938 and the change in density for the Overland (sic) Golf Course. See FDO at 41-43.

It is possible that these changes have been invalidated under ARR. However because the County continues to process permits when damage liability waivers are signed by applicants, FOSC continues to request a finding of invalidity on these changes. There has already been inappropriate development within this changed area according to Exhibit 512 and that exhibit only shows vested development that occurred prior to the hearing on the merits on the FDO. The County can easily remove any finding of invalidity by repealing

the changes it made to the Big Lake Rural Village. Otherwise a finding of invalidity will assure that the changes have been invalidated without resort to a court appeal to enforce the provisions of ARR. “ October 25, 2001 Reply brief, p. 15.

Board Discussion of Invalidity of Changes to Big Lake Rural Village

We discussed various arguments regarding the impact of the ARR decision in the Case 00-2-0049 Compliance Order issued today. We incorporate that analysis by reference. The effect of ARR may be in question, nonetheless we now follow through on our FDO invalidity commitment.

We find invalid the additional area added to the Big Lake Rural Village by Ordinance #17938 and the change in density for the Overlake Golf Course. We find invalid the CP and zoning designations for these areas. The Overlake Golf Course is labeled “Rural Village Residential (Land division only by CaRD)” on Map 2c of the July 24, 2000, CP Map Portfolio. The expanded area of the Big Lake UGA is that area designated Big Lake Rural Village on Map 2c of the July 24, 2000 CP Map Portfolio that was not designated as part of the Big Lake UGA on Map 3h of the June 1, 1997 CP Map Portfolio. The invalidated changes substantially interfere with Goals (1) and (2) of the Act.

Remand Issue 3 - Fidalgo Island Sub-Area Plan

(3) Set a specific timetable for, and firm commitment to, the timely completion of the Fidalgo Sub-Area Plan. This plan must be completed and found to be compliant before the CaRD urban reserve development or any other increase in density are allowed to occur on the Island. The specific timetable and scope of work must be developed and supplied to us within 90 days.

The County established a timetable for development and adoption of the Fidalgo Sub-Area Plan through Ordinance #18375 on August 21, 2001.

The City of Anacortes found the timetable and work program to be acceptable. However, the City charged that the County had not acted to suspend the operation of the CaRD Ordinance on Fidalgo Island as the second sentence of the FDO remand (3) directed. Thus, CaRD urban reserve development and CaRD authorized increases in density were being authorized on South Fidalgo Island.

FOSC further complained that the timetable adopted by the County does not meet the FDO

requirement for “a specific timetable for, and firm commitment to” that timetable. Appendix 2 to Ordinance #18375 states:

“The Board of County Commissioners finds the Fidalgo Island Sub-area Planning Process should be initiated as part of the 2002 Year Planning and Permit Center Work Program. The planning process should be completed with a 2-year timeframe.” (Emphasis supplied.)

FOSC therefore requested that we insist on a detailed timetable for all of the proposed tasks with a statement of commitment by the County that it will dedicate the resources necessary to meet this timetable.

FOSC was also concerned that the County had not revised its CaRD urban reserve development regulations to not allow urban reserve requests to be vested until the sub-area plan was complete and found compliant with the Act. FOSC asked us to find this failure both in noncompliance and invalid for substantial interference with Goal 1 of the Act.

The County responded:

- (1) The City provided no evidence to support its claim that CaRD urban reserve development and CaRD authorized increase in density were being authorized on South Fidalgo Island.
- (2) The Fidalgo Island Sub-Area Planning Process is set out in detail in Ordinance #18375.
- (3) The BOCC has given preliminary approval to appropriating \$75,000 for the Sub-Area Plan.
- (4) Use of the term “should” is a sufficient level of commitment. We should not presume that the County will not implement what it says it plans to.
- (5) The Board may not invalidate an ordinance of countywide application simply because the County has not adopted a sub-area plan in one part of the county. There is no ‘part’ of this ordinance that is specifically applicable to Fidalgo Island and not to other parts of the County that could be declared invalid in a manner that would comply with RCW 36.70A.302.

Anacortes countered in its reply brief:

“The City first submits Proposed Exhibit #639 to document that CaRD density increase can be authorized on Fidalgo Island despite F.D.O. #3. The City then submits Proposed Exhibit #638 to document that only City and land-owner agreement prevented the County’s authorization of an urban reserve set aside being granted in a particular case. Finally, the City understands that County Resolution #18444 (proposed Exhibit #630) allows CaRD applications to continue to be processed despite F.D.O. #3’s directive that the County take affirmative action to prevent this source of action until such time as the Fidalgo Sub-Area Plan is adopted. Contrary to the County’s assertion, the City does not ‘...concede that the County has adopted a Fidalgo Island Sub-Area Plan’ (*CRB, p.2*), but only that the County has adopted a timeframe and work program that is entirely acceptable.”

FOSC also challenged the County response:

- (1) Nothing in the County response justified the County’s failure to set a specific timetable with a firm completion date. It is not sufficient to identify the year that it will begin the process and not the timetable for interim steps and anticipated completion.
- (2) It is not sufficient that the County has only given “preliminary approval” to funding any portion of the process.
- (3) “This Board ordered the County to not allow CaRD urban reserve development on Fidalgo Island before the sub-area plan is completed and found compliant. Yet the County has not amended its existing development regulations in SCC 14.18.310(5)(c) or taken any other action to implement this Board’s order. Today, a developer can still vest a CaRD subdivision that sets open space aside for urban reserve development under SCC 14.18.310 (5)(c) despite the Board’s order to the contrary. Because of the sensitivity of Fidalgo Island planning, this Board should grant the FOSC request.” p. 17 FOSC reply brief
- (4) The County can easily avoid or remove the finding of invalidity by making appropriate changes to the ordinance as required in the remand.

In the FDO at pp. 14-15 we stated:

“We agree with the County and Anacortes that a careful sub-area assessment of topography and

environmental constraints to development should be done. Developing the best strategy for preserving rural character, protecting the Island's fragile environment, and assessing its suitability for future urban growth are crucial before more intense development is allowed to occur. It is unfortunate that the County may have increased landowners' expectations of future urban development in rural areas by applying the CaRD urban reserve designation and removing aggregation requirements on the Island before this study has been done.

The County must set a specific timetable for, and firm commitment to, the timely completion of this Plan. The Fidalgo Sub-Area Plan must be completed and found to be compliant before the CaRD urban reserve development or any other increase in density are allowed to occur on the Island.” (Emphasis in original)

We reaffirm that conclusion.

According to the County's own timetable, it will be three years before the sub-area plan is adopted and found to be compliant with the Act. If mechanisms such as the urban reserve CaRD allow an increase in density and further vesting occurs before the plan is completed, the probability of the plan actually achieving its purpose (and the goals of the Act) diminish greatly. Why should the County spend money and great amounts of citizen and employee time and effort developing a plan that is being undermined as they work?

The pattern of further development of this delicate area should be determined by an open public process, not at the whim of a landowner/developer. Also, since the City of Anacortes will be impacted by this development and will need to serve more urban areas with sewer if septic tanks fail, they should be closely involved in the subarea planning process.

The County remains in noncompliance as to this remand. If the County has not acted within 90 days to prohibit use of the urban reserve CaRD and other mechanisms that could allow increased density within the study area, we declare the application of all such mechanisms within Fidalgo Island to be invalid. Further, within 90 days, the County must supply us with a more specific timetable for interim steps and completion of the Plan. Progress toward completion must also be reported to us every 180 days after that.

Remand Issue 4 - Timely Annexation Within Municipal UGAs

(4) Within 90 days, change the amendments to CP Policy 7A-4.29a to make it clear that

annexations are to occur as soon as feasible within municipal UGAs to facilitate the efficient phasing of urban infrastructure and development.

The County claimed it complied by eliminating CP policy 7A-4.2(a) with the adoption of Ordinance #18375 on August 21, 2001. FOSC did not challenge this claim. Anacortes disagreed strongly, charging that the County had taken no affirmative action to “make it clear that annexations are to occur as soon as feasible within municipal UGAs to facilitate the efficient phasing of urban infrastructure and development.”

In the 11/30/01 Compliance Order for Case 00-2-0050c at p. 7, we stated:

“We find the County in continued noncompliance on the transformance of governance issue. Within 180 days, the County must negotiate and adopt updates to interlocal agreements to ensure that annexations will be facilitated to enable the required efficient timing and phasing of urban infrastructure extension and urban development within municipal UGAs. Also, the County must adopt provisions for unincorporated UGAs which enable and encourage urban development to occur when full urban infrastructure and services are available.”

We find that the County’s action of eliminating CP Policy 7A-4.2(a) complies with the Act because of Petitioners’ failure to show the action was clearly erroneous. We will track County progress toward transformance of governance, timely annexations, and efficient phasing of urban infrastructure and development through the remands in Cases #00-2-0050c and 00-2-0049c.

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Remand Issue 5 - Rural Signage

(5) Set much more strict parameters for rural signage to protect the rural character of the County and conform with RCW 36.70A.030(14)(a) and .070(5)(c). If compliance is not achieved within 90 days, we will consider Petitioners’ request for invalidity.

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The County stated in its 9/4/01 Statement of Actions Taken:

“The County went through the public process on this item and proposed changes to its Sign Ordinance, which were subject to public comment, consideration and recommendation by the Planning Commission. However, the Board of County Commissioners determined that the proposed ordinance should be returned to the Planning Commission to consider additional matters raised in the Board’s review.”

FOSC stated in its 9/25/01 opening brief:

“Regarding the remaining items in the FDO, the most egregious issue is the lack of a rural sign ordinance that protects rural character outside the UGAs. Item 5 – FDO at 48. This Board found that the County must set ‘much more strict parameters for rural signage.’ This Board stated, ‘If compliance is not achieved within 90 days, we will consider Petitioner’s request for invalidity.’ FDO at 48. It is now more than 230 days from the issuance of the FDO and the County has not yet adopted a revised rural sign ordinance. If the County has not adopted a revised rural sign ordinance by the date of the compliance hearing, Friends requests a finding of invalidity on SCC 14.16.820, the rural sign ordinance.”

The County responded that it recognized that it would be found in continued noncompliance on this issue, but that there should be no finding of invalidity.

The County stated that the BOCC explained its reasons for taking no action on this remand in the following finding:

“The Board of County Commissioners finds that some of the proposed amendments to SCC 14.16.820 Signs are too restrictive and will unduly impair the ability of rural business owners to advertise their businesses. Therefore, the BCC is remanding the Sign Code back to the Planning Commission for additional public review, public hearing and deliberations. The BCC is particularly concerned about the reduction in the allowed size of certain signs, the elimination of certain types of signs from the rural area, and the potential that certain required emergency and safety-oriented signs will be counted toward the maximum square footage of signs allowed. The BCC is also concerned about the requirement that existing signs not conforming to the code be removed within one year. Although this requirement that non-conforming signs be removed was adopted as part of Ordinance No. 17938 in July of 2000, it would become especially burdensome if some of the additional proposed restrictions to the sign code were adopted, and therefore is directly related to the sign compliance issues.” Ex. 618 Appendix 2, Finding 5.

Regarding FOSC’s request for invalidity, the County contended:

- 1) FOSC has made no showing of substantial interference with respect to this specific sign code, which is more restrictive than the pre-GMA one.
- 2) Under the ARR decision, this regulation, since it was not amended before the expiration of the remand period, is no longer in effect. Thus, the County is no longer enforcing the sign ordinance, consistent with ARR.

3) If it is no longer effective, then the regulation is not substantially interfering with GMA. There is nothing to invalidate.

FOSC replied:

“This Board has a specific right to issue a finding of invalidity in this case. RCW 36.70A.330(4). In general, a Board may find an ordinance not in compliance at the hearing on the merits and set a remand period. If a county takes no action during the remand period, the Ordinance may be invalidated under ARR. But if the legislature intended that to be the end of the process, it would not have directed the Board to consider issuing a finding of invalidity on the original ordinance at the compliance hearing. While the original ordinance may already be invalidated under ARR, the other provisions of the Board’s finding of invalidity would still be applicable to a Board issued order of invalidity. In particular, permit applications that otherwise would have been vested to the County’s ordinance, will be subject to an ordinance that the County passes on remand. See RCW 36.70A.302(3)(a). For this additional reason, this Board should now enter a finding of invalidity on the rural sign ordinance.” 10/25-01 Reply brief p. 16

Board Discussions on Rural Signage

The County remains in noncompliance.

As to the request for invalidity, we warned the County a year ago, “If compliance is not achieved within 90 days, we will consider Petitioners’ request for invalidity.”

The County stated that consistent with ARR, it is no longer enforcing the non-compliant sign ordinance. It thus has either reverted to the old (even more noncompliant) ordinance or there are currently no restrictions at all on signage in the rural areas of Skagit County. That is truly a frightening prospect and a serious threat to GMA’s requirement to protect rural character.

FOSC provided adequate evidence during the original hearing process for us to invoke invalidity. With the County’s reversion to an even worse ordinance, or no control at all, we have even more reason to invoke invalidity. We may not be able to conclusively determine the effect of ARR, but we know we can invoke invalidity. **We find that SCC 14.16.820 and Skagit County’s failure to ensure that its rural lands remain rural through adequate signage controls substantially interfere with the fulfillment of Goals (2) and (10) of the Act.**

Remand Issue 8 - Adopt City DRs For Implementation Within Municipal UGAs

(8) Within 30 days, adopt current city DRs for enforcement within municipal UGAs. Changes to city ordinances must be adopted promptly in the future to ensure enforceability of the updated municipal codes.

We discussed this issue in the November 30, 2001 Compliance Order for Case #00-2-0050c. The record shows that the County has adopted current city regulations for implementation within the municipal UGAs.

We find the County in compliance as to remand issue (8).

Remand Issue 14 - Minimum Density Note On Concrete UGA Map

(14) Within 90 days, place a minimum density note on the UGA map for Concrete consistent with other UGA maps.

The County placed a minimum density note on the UGA map for Concrete through Ordinance #18375 on August 21, 2001.

FOSC contended that the County should not be found in compliance until it clarifies what zones on the County's map that the density limitation is applicable to.

Although it would be more clear if such a notation were added to the map, we are not convinced that the County's action was in error.

We find the County in compliance as to remand issue (14).

Remand Issue 15 - Catch-all

(15) Any findings of noncompliance in previous sections of the FDO are incorporated by reference.

This finding of noncompliance was simply a catchall in case we had found the County in noncompliance in the body of the decision but inadvertently overlooked it in the Order section. FOSC has not convinced us that any such omission was made. **We therefore find the County in compliance as to Issue (15).**

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 30th day of January, 2002.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Nan A. Henriksen
Board Member

William H. Nielsen
Board Member

Les Eldridge
Board Member