

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

WHIDBEY ENVIRONMENTAL ACTION NETWORK)	
(WEAN),)	No. 00-2-0054
)	
Petitioner,)	FINAL DECISION
)	AND ORDER
v.)	
)	
ISLAND COUNTY,)	
)	
Respondent,)	
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Introduction

The hearing on the merits in this case was held March 29, 2001 at the Island County Courthouse complex. Les Eldridge and William Nielsen were present for the Board. Island County was represented by Keith Dearborn. WEAN was represented by Steve Erickson. Motions to add to or supplement the record from WEAN, dated January 17, 2001, February 23, 2001, and a March 7, 2001, motion from the County to supplement the record were granted.

In the final decision and order (FDO) in Case #98-2-0023c, we required the County to adopt designation criteria for species and habitats of local importance (HLI). The County amended its code in response and we found compliance. The same FDO required the County to take appropriate action on nominations for HLI made by Whidbey Audubon Society (Audubon). Ordinance #C-78-00 responded to this requirement by designating all nine Audubon HLI nominations. WEAN challenged the ordinance in this proceeding. Audubon opted not to participate.

Burden of Proof, and Standard of Review

Petitioners challenge Island County's adoption of Ordinance #C-78-00. Pursuant to RCW 36.70A.320(1), Ordinance #C-78-00 is presumed valid upon adoption.

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

Pursuant to RCW 36.70A.320(3), the Board “shall find compliance unless it determines that the action by [Island County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” For the Board to find the County’s action clearly erroneous, the Board 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).

Contentions

WEAN contended that while the public participation process for the adoption of Ordinance #C-78-00 complied with the Growth Management Act (GMA, Act), the ordinance did not protect the functions and values of wetland buffers and allowed road building to the extent that was not compliant with the Act. WEAN asserted that the Washington Department of Fish and Wildlife (WDFW) had recommended wider buffer widths than were adopted in the ordinance. WEAN complained that while some species’ nesting areas were protected, feeding areas had been ignored.

WEAN observed that some fish and wildlife habitat conservation areas (FWHCA) had not been designated as critical areas. WEAN alleged that the adoption process was not reasoned because analysis of existing regulations did not take place, and that best available science (BAS) was not included.

The County responded that it now has a process for nomination and designation of species or habitat of local importance. As examples, it noted the great blue heron, common loon, osprey, and others had been nominated and designated as species of local importance. The County also designated more than 5,000 acres of habitat recommended by Audubon.

The County noted that Audubon expressed its satisfaction with County actions. Although Audubon supported a finding of compliance on this issue in Case #98-2-0023c, WEAN chose to

challenge the HLI in this proceeding.

The County argued that the management strategies in Island County Code (ICC) 17.02.110.C.1.h (vi) provided regulation and protection for all HLIs, and included requirements for a biological site assessment (BSA).

The County pointed out that HLIs contain only Category A wetlands, which we previously held had not been proven to have buffers, which resulted in a net loss of wildlife functions and values. *ICCGMC v. Island County* Case #98-2-0023c (CO 11-17-00).

CONCLUSION

WEAN has failed to meet its burden of demonstrating clear error in the County's adoption of Ordinance #C-78-00. The County designated 5,200 acres in areas nominated by Audubon. Audubon failed to challenge this ordinance. The County designated all Audubon-nominated HLIs, and afforded protection of the HLIs through its ordinance requiring BSAs and habitat management plans (HMPs) as some of the management strategies called for in the Island County Code.

Petitioners acknowledged that nests of herons and pileated woodpeckers were designated and protected (March 21, 2001 WEAN reply brief, page 10) but complained that WDFW recommendations (Exhibit 5936) for 200-foot buffers in rural area HLI to protect heron feeding were ignored.

At the Board of County Commissioners (BOCC) hearing August 28, 2000 (County Exhibit C), a discussion of this recommendation took place. WEAN stressed the need for wetland buffers wider than 100 feet. Audubon underscored the setback (extension) of the HLI boundaries beyond wetlands. Audubon noted that these extended, non-wetland portions of the 5,200-acre HLIs would "trigger the applicability of...other existing laws" (State Environmental Policy Act, Shoreline Master Program, ICC management strategies including BSAs and HMPs), and expressed satisfaction with the ordinance. The BOCC, after further discussion, approved the ordinance. We find that the County included BAS in its deliberations and that its decision to

adopt the ordinance was within the range of discretion afforded by the Act.

We find that Ordinance #C-78-00 is in compliance with the Growth Management Act.

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 21st day of May, 2001.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

William H. Nielsen
Board Member