

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

CLEAN WATER ALLIANCE, et. al.,)	
)	No. 02-2-0002
Petitioners,)	
)	ORDER RE:
v.)	MOTIONS AND
)	NOTIFICATION
)	OF OUR INTENT
WHATCOM COUNTY,)	TO DISMISS
)	
Respondent,)	
)	
and)	
)	
SUDDEN VALLEY COMMUNITY ASSOCIATION)	
)	
Intervenors,)	
)	

Motions Regarding the Index of the Record

On March 29, 2002, we received from petitioners a motion to clarify the index of the record. The petitioners observed that the index provided by the County on March 13, 2002, ended at item 37. Yet, the petitioners noted, the County Planning Department later had referenced documents which included index item number 45.

On April 1, 2002, we received from the County additions to the index of the record which included index numbers 38 through 45. **We thus deem the index of the record clarified in response to petitioners' motion.**

On April 2, 2002, we received a correction of the index of the record from petitioners attempting to add 38 items to the record from as early as 1997. These items were not submitted on the additions to the index of the record form required by our rules. On April 4, 2002, we received a

memorandum from petitioners indicating that they would be submitting the additions on the proper form by April 4, 2002. We received that correction on April 5, 2002, on the proper form. All of the additions appear to be from previous cases in Whatcom County and all appear to concern fish and water quality issues or other critical areas issues. As petitioners have yet to indicate in their issue statement what parts of Ordinance #2001-071 and associated documents amended any of the County's critical areas provisions, **we will defer our ruling on this motion until after the forthcoming briefing and hearing on our notice of intent to dismiss** (see p. 4 of this order). As yet we have received no response from the County to petitioners' motion to add to the index of the record.

Motion for Clarification of the Board's Prehearing Order of April 1, 2002 and Motion for Extension of Time to File an Amended Petition

We received the above-noted motions from petitioners on April 5, 2002. **We grant the motion to extend the deadline for a second filing of an amended petition for review (PFR) regarding issues in this case.** A second amendment regarding issues must be filed by April 22, 2002. As we stated in the prehearing order of April 1, 2002, their amendment must comply with WAC 242-02-210(2)(c) which requires "a detailed statement of the issues...that specifies...the provision of the document...being appealed." Written comments in response to the second amended PFR are due April 30, 2002. A telephonic hearing will be held Thursday, May 2, 2002, at 9:00 a.m. To connect to the telephonic hearing call: (360) 709-4811. Parties may comment on the second amended PFR regarding issues at that time. The hearing will also offer an opportunity for parties to comment verbally on our notice of intent to dismiss (see p. 4 of this order).

We now address petitioners' motion for clarification of our prehearing order, a motion we also received April 5, 2002.

In their motion petitioners declared that "the issues from the past remain much the same in the present except that previous environmental conditions have deteriorated and new problems have been discovered." We note that petitioners' challenge is to an ordinance whose purpose is to "establish a provisional urban growth area at Sudden Valley." The ordinance does not appear to amend environmental conditions, either new or old, except to declare that the existing Whatcom County critical areas ordinance and other applicable laws and development regulations continue to protect any critical areas

located within the proposed urban growth area. The ordinance further goes on to declare that "Whatcom County development regulations will not change if the area is designated as a provisional UGA." As was pointed out in the County's March 18, 2002 Motion for More Definite and Certain Statement of Issues, there is a continued lack of specificity from petitioners as to what specific sections of the ordinance alter, in any way, the plan and regulations affecting petitioners' issues, issues which include: capital facilities plan, adjacent jurisdictions, shoreline management program, internal consistency, the fisheries industry, fish conservation and fish habitat, Kokanee and Cutthroat spawning and rearing habitat, increase of impacts on water quality, and acquisition of lands useful for storm water management facilities.

Whatcom County Superior Court and Division One Court of Appeals ruled that the record of our previous cases concerning the plan and regulations addressing the above issues contained no substantial evidence supporting noncompliance or invalidity. *Wells v. WWGMHB*, #98-2-00546-3, #43028-9-1, WWGMHB Case #97-2-0030c, Compliance Order, March 28, 2001.

The County's motion, which we granted on April 1, 2002, calls specifically for the identification of the portions of the ordinance which the petitioners allege fail to comply with the Growth Management Act regarding the issues noted above.

In our reading of the ordinance we were unable to identify portions bearing on the issues noted above.

Notice of Intent to Dismiss

Petitioners have thus far failed to demonstrate what portions of the ordinance and associated documents amend any Whatcom County plan or development regulation (DR) currently presumed to be valid. We have said many times in previous orders that a decision by a jurisdiction not to amend a plan or DR presumed to be valid does not constitute a failure to comply with the Act. In our reading of the record thus far before us, it appears that the only amendments to the Whatcom County plan or DRs presumed to be valid involved a change in designation of Sudden Valley Community from Resort-Recreational to Provisional (or nonmunicipal) Urban Growth Area. Unless petitioners can demonstrate in their next amended

petition what portions of the ordinance and associated documents actually amend current, presumably valid, Whatcom County plans or DRs in ways other than that redesignation, we will dismiss the case for failure to comply with WAC 242-02-720, for failure to comply with WAC 242-02-210(2)(c) and 260(2), and for failure to comply with our prehearing order requiring “a more complete statement of the nature of the claim.”

Written comments regarding this Intent to Dismiss are due April 30, 2002.

The hearing, in which parties may offer argument regarding those comments, will be held telephonically May 2, 2002, at 9:00 a.m. To connect to the telephonic hearing call: (360) 709-4811. The prehearing order schedule is suspended.

So ORDERED this 9th day of April, 2002.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Presiding Officer