CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

1000 FRIENDS OF WASHINGTON, *et al.*, and JERRY HARLESS, *pro se*, Petitioners, v. KITSAP COUNTY, Respondent, and RICHARD BJARNSON, Intervenor, and OVERTON & ASSOCIATES, *et al.*, *Amici Curiae*	)	**CPSGMHB Case No. 04-3-0031c** ***[1000 Friends/KCRP]*** **ORDER FINDING COMPLIANCE [Re: Failure to Act on Kitsap County 10-year Comprehensive Plan Update]**

I. BACKGROUND

On June 28, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued its Final Decision and Order (**FDO)** in the above captioned matter. Kitsap County's failure to update its Urban Growth Areas (**UGA**s) and adoption of "reasonable measures" were at issue. The Board's FDO concluded that Kitsap County failed to comply with the statutory requirement to update its UGAs. The Board concluded that the County's adoption of reasonable measures complied with the GMA. The FDO established a compliance schedule, allowing a year for the County's update of its UGAs.

The FDO stated:

- Kitsap County has **failed to act** to review and revise its designated urban growth areas and **has not complied** with the requirements of RCW 36.70A.130(3) regarding urban growth areas. Therefore, Kitsap County is directed to take the necessary legislative action to comply with the review and revision requirements

of RCW 36.70A.130(3) for its urban growth areas according to the following compliance schedule:

- RCW 36.70A.300(3)b) allows the Board to extend the 180-day compliance schedule for a noncompliant jurisdiction if the Board determines that the case is one of unusual scope or complexity. **The Board finds that Kitsap County's UGA review will be a complex task**; therefore, Kitsap County shall adhere to the following "extended" compliance schedule:

  … [establishing schedule]

  Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. August 7, 2006** at the Board's offices. [The only matter at issue at this compliance proceeding will be whether Kitsap County enacted the required review and revision to its urban growth areas and permitted urban densities. The substance of those legislative designations and enactments will **not** be part of the compliance proceeding in this case – CPSGMHB Case No. 04-3-0031c, *1000 Friends/KCRP v. Kitsap County*. Any challenges to the substance of those enactments must be brought through a timely filed petition for review.]

FDO, at 39.

The County and various parties appealed the FDO to the Superior Court of Thurston County, where it was consolidated with appeals of a prior Board decision and heard as Cause No. 04-2-02138-1, 05-2-01564-8, 05-2-01678-4. The Superior Court declined to stay the compliance proceedings before the Board.

On October 14, 2005, the Board extended the compliance deadline an initial six months at Kitsap County's request, to December 31, 2006, based on the County's testimony as to the complexity of the UGA review.

On January 11, 2007, the Board received Kitsap County's Statement of Actions Taken to Comply (SATC) and Compliance Index. The SATC stated that Kitsap completed the 10-year update of its comprehensive plan by adopting Ordinance 370-2006 on December 11, 2006. With its SATC, Kitsap County submitted copies of the 10-Year Comprehensive Plan Update, the Draft and Final EIS, Land Use Maps, and revised development regulations (Kitsap County Code Title 17, 18, and 21) in Ordinances 367-2006, 368-2006 and 369-2006.

On January 11, 2007, the Board received Harless' Response to Statement of Actions Taken to Comply. Petitioner Harless agrees that the County has taken the action required by the GMA and the Board's FDO. On January 23, 2007, the Board received Futurewise's Response to Statement of Actions Taken to Comply. Futurewise indicated no objection to a finding of compliance on the failure-to-act portion of the case.

On February 1, 2007, at 11:30 a.m., the Board convened the Compliance Hearing. Present for the Board were Board members Margaret Pageler, Ed McGuire and Dave Earling, along with law clerk Julie Taylor. Kitsap County participated telephonically and was represented by Deputy Prosecutor Lisa Nickels. Petitioner Jerry Harless was present, and Petitioners Tom Donnelly, for KCRP, and Futurewise, represented by Keith Scully, participated by telephone.[1] Elaine Spencer, attorney for *Amicus* Overton & Associates, had previously notified the Board that she would not be participating.

At the Compliance Hearing the County stated that the comprehensive plan review and update, including the 10-year review of Urban Growth Areas and permitted densities, was completed and adopted by the County on December 11, 2007. The County requested the Board enter an order finding compliance. Petitioners Harless, Futurewise and KCRP concurred that the required review has been completed.

II. FINDINGS AND CONCLUSIONS

The Board finds and concludes:

1. Kitsap County adopted Ordinance No. 370-2006, including the 10-Year Comprehensive Plan Update, the Draft and Final EIS, Land Use Maps, and revised development regulations (Kitsap County Code Title 17, 18, and 21) in Ordinances 367-2006, 368-2006 and 369-2006, on December 11, 2006.

2. Ordinance No. 370-2006 and the attached exhibits amend the Kitsap County Comprehensive Plan and development regulations, specifically incorporating the review and analysis of designated urban growth areas and required densities.

3. By enacting Ordinance No. 370-2006 and the attached amendatory exhibits, Kitsap County has discharged its duty to act in reviewing and updating its UGAs and required densities, as required by RCW 36.70A.130(3). Therefore the Board will issue a Finding of Compliance.

4. The Board's Finding of Compliance acknowledges that Kitsap County has complied with the "update action" requirements of RCW 36.70A.130(3) as interpreted in the Board's June 28, 2005 FDO; the substance of the updated and amended UGAs and densities is not before the Board in this compliance review.[2]

III. APPEAL AND STAY

On December 22, 2005, the Superior Court for Thurston County entered a "Decision of the Court following Trial held December 2, 2005." The Court ruled:

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[1] Charles Maduell, Davis Wright Tremaine, and Kent Barryman, OPG Properties, were also on the conference call in connection with a related case – CPSGMHB Case No. 06-3-0007.

[2] Certain substantive issues are pending in the compliance proceedings concerning the Kingston Sub-area Plan, CPSGMHB Case No. 06-3-0007, and other challenges are subject to new PFRs.

(1) affirming the Board's determination that Kitsap County was required to conduct the 10-year review of its UGAs by no later than December 1, 2004;
(2) affirming the Board's determination that reasonable measures were required to promote consistency as a result of the County's 2002 buildable lands review; and
(3) reversing the Board's determination that the reasonable measures taken by the County were sufficient under the statute.

On January 6, 2006, the Board issued its "Order Acknowledging First Compliance Progress Report and Trial Court Ruling." The Board's Order noted:

> While this matter has not yet been remanded to the Board, the County has the opportunity to coordinate its UGA update with adoption of reasonable measures in a single, timely process to achieve GMA compliance.

On June 16, 2006, the Thurston County Superior Court remanded the matter to the Board for further hearings consistent with the Court's December 22, 2005, decision. Subsequently, the case was appealed to the Court of Appeals as Cause No. 35267-2-II, and the Court entered a stay of the Superior Court remand. Because the reversal of the Board's FDO is still pending, the Board does not close this case.

IV. ORDER

Based upon the Board's review of the GMA, prior decisions of the Boards, the June 28, 2005 FDO, Ordinance No. 370-2006 and attached exhibits, the County's SATC, the presentations of the parties at the compliance hearing, and having discussed and deliberated on the matter, the Board ORDERS:

- Kitsap County's adoption of Ordinance No. 370-2006, with attached Exhibits, discharges the County's duty to take action to review and update its urban growth area designations and densities as required by RCW 36.70A.130(3). Therefore, pertaining to this action, the Board enters a **Finding of Compliance**.

So ORDERED this 2nd day of February, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member