CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

SUQUAMISH TRIBE, KITSAP CITIZENS FOR RESPONSIBLE PLANNING and JERRY HARLESS,	)	**Case No. 07-3-0019c**
Petitioners,	)	***(Suquamish II)***
PORT GAMBLE S'KLALLAM TRIBE	)	
Interveners,	)	**ORDER GRANTING DISPOSITIVE MOTION [Legal Issue No. 4.]**
v.	)	
KITSAP COUNTY,	)	
Respondent,	)	

I. PROCEDURAL HISTORY

On February 15, 2007, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the Suquamish Tribe (**Petitioner I** or **Suquamish**). The matter was assigned Case No. 07-3-0018, and is captioned, *Suquamish II v. Kitsap County*. Board member Edward G. McGuire serves as the Presiding Officer (**PO**) for this matter. Petitioner challenges Kitsap County's (**Respondent, Kitsap** or the **County**) adoption of Ordinance Nos. 367-2006, 368-2006, 369-2006 and 370-2006 amending Kitsap County's Comprehensive Plan (collectively the **Plan Update**). Petitioners contend that certain provisions of the County's Plan Update are noncompliant with various provisions of the Growth Management Act (**GMA** or **Act**).

On February 16, 2007, the Board received a PFR from the Kitsap Citizens for Responsible Planning and Jerry Harless (**Petitioner II** or **KCRP/Harless**). The matter was assigned Case No. 07-3-0019, and is captioned *KCRP/Harless II v. Kitsap County*. Board member Edward G. McGuire also serves as the PO for this matter. Petitioners challenge Kitsap County's adoption of Ordinance Nos. 367-2006 and 370-2006 amending Kitsap County's Comprehensive Plan – the Plan Update. Petitioners contend that certain provisions of the County's Plan Update are noncompliant with various provisions of the GMA.

On February 22, 2007 the Board issued its "Notice of Hearing and Consolidation" (**NOH**), in the above-captioned case. The NOH set a date for a prehearing conference (**PHC**) and established a tentative schedule for the case. The two matters were consolidated into CPSGMHB Consolidated Case No. 07-3-0019c, and are captioned S*uquamish II v. Kitsap County*.

On March 22, 2007, the Board conducted the prehearing conference[1] and, on March 23, the Board issued its "Prehearing Order" (**PHO**). The PHO set the final schedule for this case, framed the Legal Issues to be decided by the Board, and granted intervention to the Port Gamble S'Klallam Tribe.

On April 10, 2007, the Board received Kitsap County's "Motion to Dismiss Petitioner Suquamish Tribe's Legal Issue 4" (**Kitsap Motion**). Attached to the motion was a "Declaration of Angie Silva" (**Silva Declaration**).

On April 16, 2007, the Board received a "Notice of Withdrawal of Mark Bubenik" and "Notice of Withdrawal and Substitution of Counsel." Melody Allen is now representing the Suquamish Tribe as their attorney of record.

Also on April 16, 2007, the Board received "Petitioner Suquamish Tribe's Reply in Opposition to Kitsap County's Motion to Dismiss Petitioner Suquamish Tribe's Legal Issue 4" (**Suquamish Response**). Attached to the Response was a copy of a request made by the Tribe to the County for the addition of certain items to the Index and, one Exhibit.

On April 24, 2007, the Board received "Kitsap County's Response to Suquamish Tribe's Reply re: County's Motion to Dismiss Legal Issue No. 4" (**Kitsap Reply**).

All filings were timely. The Board did not hold a hearing on the motions.

II. DISCUSSION OF DISPOSITIVE MOTION

Legal Issue No. 4, the issue in question here states,

> 4. *Did the County fail to follow guidance under RCW 36.70A.020(1), (2) and (3) and fail to comply with RCW 36.70A.070(6)*[2] *by expanding several UGAs as part if the Plan Update – Ordinance No. 370-2006 – without a Transportation Element and Plan to ensure the necessary facilities will be adequate and available to support development within the 20-year planning period?*

[1] The Port Gamble S'Klallam Tribe attended the PHC and filed a motion to intervene.

[2] RCW 36.70A.070(6) sets forth the GMA's requirements for the Transportation Element of Comprehensive Plans.

See 3/23/07 PHO, Individual Suquamish Tribe Legal Issues, No. 4, at 10; and Suquamish Tribe's 3/22/07 Amended PFR, 3.4, at 3.

This issue statement clearly alleges that the County proceeded to do its Plan Update, particularly related to certain UGA expansions, without a compliant transportation element.

In its motion, the County asserts that the Suquamish Tribe does not have participation standing to pursue this issue, since the Tribe did not comment on transportation planning or the transportation element when it participated during the County's Plan Update process. Therefore, the County contends the Tribe's participation before the County was not reasonably related to Legal Issue 4 as presented to the Board; consequently, Legal Issue 4 should be dismissed. Kitsap Motion, at 2-4; and Silva Declaration.

RCW 36.70A.280(4) provides: "To establish participation standing . . . a person must show that his or her *participation before the county* or city *was reasonably related to the person's issue as presented to the Board*." (Emphasis supplied.)

This GMA statutory language evolved from a Division I Court of Appeals decision in *Wells v. WWGMHB*, 100 Wn. App. 657, 997 P.2d 405 (2000). The *Wells* court cited with approval, at 671, this Board's decision on participation standing in *Alpine v. Kitsap County* (***Alpine***), CPSGMHB Case No. 98-3-0032c coordinated with CPSGMHB Case No. 95-3-0039c, Order on Dispositive Motions, (Oct. 7, 1998). There the Board stated,

> To have meaningful public participation and avoid "blind-siding" local governments, members of the public must explain their land use planning concerns to local government in sufficient detail to give the government the opportunity to consider these concerns as it weighs and balances its priorities and options under the GMA. . . . *If a petitioner's participation is reasonably related to the petitioner's issue as presented to the Board, then the petitioner has standing to raise and argue that issue; if the petitioner's participation is not reasonably related to the petitioner's issue as presented to the Board, then the petitioner does not have standing to raise and argue that issue.*

Alpine, at 7-8; (emphasis supplied).

The Tribe acknowledges the participation standing requirements of RCW 36.70A.280(4), as discussed in *Wells* and *Alpine*. Suquamish Response, at 2-3. However, the Tribe contends that it submitted specific comments to the County, related to transportation planning and the transportation element, on October 30, 2006. Therefore, the Tribe contends that its participation was reasonably related to the issue presented to the Board – Legal Issue 4. *Id*. at 3-5; *see* Index No. 30987, *hereafter*, Ex. 2.

The October 30, 2006 letter from the Tribe, to the County Commissioners, comments on: 1) the Draft Comprehensive Plan Policy Document; 2) the Integrated Comprehensive Plan and Environmental Impact Statement; and 3) the Proposed Regulations. Ex. 2, at 1-8. The Tribe asserts the following comment in the 10/30/06 letter establishes participation standing on Legal Issue 4:

> Chapter 10 Parks, Recreation and Open Space
> There was no reference in the materials provided regarding *The County Greenways Plan* (June 1996). The Kitsap County Greenways Plan committee included County staff and local citizens. The Greenways Plan addressed the following four elements:
> The Kitsap County Bicycle Facilities Plan;
> The Kitsap County Off-Road Trails Plan;
> The Roadside Scenic Resource Corridors Plan; and
> The Wildlife Corridors Plan.
> The Plan [Greenways Plan] links recreational trails, commuter bikeways, and heritage and wildlife corridors with parks, schools, places of employment, shopping areas, transit facilities, and a variety of scenic, educational, and interpretive resources, and identifies these corridors as "Greenways." Greenways will also include other undeveloped scenic and natural resource corridors. Even though this document was completed in 1996 and may have certain areas that need to be updated/revised to include new information it is still a valuable comprehensive document that had a lot of time and effort invested in its creation and it is unfortunate that it has largely been ignored.

Ex. 2, at 3; cited in Suquamish Response, at 3-4.

The Tribe concedes that neither the phrase "transportation planning" nor "transportation element" is mentioned in this comment; but the Tribe asserts that its Chapter 10 comments are "inextricably linked to the contents of Chapter 8 Transportation." *Id*. Specifically, Petitioners note the Parks, Recreation and Open Space Goal 10, and Policy POS-31, which state, respectively:

> Goal 10. Build a Greenways Network of non-motorized, on-road commuter trails and off-road recreation trails within and outside of road rights-of-way, that interconnect open spaces, urban areas, communities, and recreational areas.
>
> Policy POS-31. Coordinate Greenway implementation efforts with Chapter 8, Transportation, to develop a system of non-motorized transportation facilities that:
>
> - Are constructed primarily within the rights-of-way of existing and proposed public streets or roads; and

- Provide safe transportation among a variety of regional, inter-community and local Kitsap County destinations for bicyclists and pedestrians.

Id. at 4; *citing* Core Document I, Kitsap County Comprehensive Plan Policy Document, Volume 1, Chapter 10, at 10-5.

In reply, the County asserts that the Tribe has failed to show that the comments in Ex. 2 are reasonably related to Legal Issue 4. Kitsap Reply, at 1. The County notes that Chapter 10 is the Parks, Recreation and Open Space Element of the County Plan, while Chapter 8 is the Transportation Element. Respondent also notes that Petitioner's comments from the 10/30/06 letter are related to Chapter 10, not Chapter 8; and that they do not put the County on notice that Petitioner objects to, or believes that, the County's transportation element is noncompliant. *Id*. at 2-3. The County concludes that the Tribe's comments are not reasonably related to the issue before the Board, and Legal Issue 4 should be dismissed. *Id*. 3-4.

The Board agrees with the County. While the Plan itself "links" the goal of a "Greenways Network" to the transportation element, the Tribe's comments do not. The Plan commits the County to the creation of a Greenways Network; this Network's future development is to be coordinated with the County's ongoing transportation planning. The Tribe's comments in Ex. 2 lament the lack of recognition of a prior Greenways Plan as a resource document in doing the Plan Update. The Board fails to see how the lack of recognition of an existing document pertaining to Greenways can be interpreted as expressing a concern that the County's transportation element was deficient with GMA requirements. In relying upon the 10/30/06 letter, the Suquamish Tribe did not explain their concerns to Kitsap County in sufficient detail to enable the County to consider them. The concerns raised in the 10/30/07 letter are not reasonably related to Legal Issue 4 as presented to the Board. Therefore, the Board concludes that the Suquamish Tribe lacks participation standing and the County's motion to dismiss Legal Issue 4 is granted.

III. ORDER

Based upon review of the petition for review, prehearing order, motions, briefs and exhibits submitted by the parties, the GMA, and prior decisions of this Board and other Growth Management Hearings Boards, the Board enters the following Order:

- Kitsap County's motion to dismiss Individual Suquamish Tribe Legal Issue 4 is **granted**. The Board notes that there are still four Individual Suquamish Tribe Legal Issues and five Legal Issues in common with KCRP.

So ORDERED this 3rd day of May, 2007.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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David O. Earling
Board Member

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Edward G. McGuire, AICP
Board Member

Note: This Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.