CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

CITY OF BREMERTON, *et al.*, Petitioners, v. KITSAP COUNTY, Respondent, MANKE LUMBER COMPANY; OVERTON FAMILY; MCCORMICK LAND COMPANY; OLYMPIC PROPERTY GROUP; and PORT OF BREMERTON, Intervenors, and 1000 FRIENDS OF WASHINGTON, *Amicus Curiae*.	**CPSGMHB Consolidated Case No. 04-3-0009c** ***(Bremerton II)*** **ORDER ON REMAND**

I. BACKGROUND

On August 8, 2004, the Board issued its Final Decision and Order, and on September 16, 2004, issued its Order on Reconsideration in CPSGMHB Case No. 04-3-0009c *[Bremerton II]*. The FDO found certain provisions of Kitsap County Ordinance No. 311-2003 compliant and other provisions non-compliant with the Growth Management Act and remanded the matter to Kitsap County for appropriate action. The parties sought judicial review of various elements of the FDO, not including the assignments of non-compliance. With respect to the rulings of non-compliance, neither the Superior Court nor the Court of Appeals issued a stay of the Board's compliance proceedings in the matter. Kitsap County in due course undertook new legislative action repealing the noncompliant Rural Wooded Lands policies. Following a Compliance Hearing, on February 27, 2005, the Board issued its Order Finding Compliance and Rescinding Invalidity [Re: Rural Wooded Lands Policies]. However, because of the pendency of appellate review, the Board's compliance order did not close the case.

The Court of Appeals, Division II, filed its decision in this matter on May 30, 2007, terminated review on August 31, 2007, and issued its mandate on September 5, 2007.

On January 14, 2008, the Board issued a Notice of Pre-Remand Hearing Conference setting a date of February 4, 2008, for a hearing to determine the issues, if any, remaining to be decided on remand.

On January 29, 2008, the Board received a copy of "Stipulation and Order following Mandate from the Court of Appeals." The Order stated, in relevant part:

> The Growth Board's Final Decision and Order entered August 9, 2004, and Order on Reconsideration issued on September 16, 2004, in *Bremerton II*, Case No. 04-3-0009c are hereby *affirmed in part and reversed in part*, and is hereby *remanded* to the Growth Board for further action consistent with the opinion of the Court of Appeals in Case No. 35267-2-II.

On January 25, 2008, a Stipulation Regarding Remand Order was filed on behalf of Respondent Kitsap County and Petitioners KCRP, Port Gamble S'Klallam Tribe, Suquamish Tribe and Jerry Harless. The Stipulation provides, in relevant part:

> 3. Kitsap County appealed the FDO to Thurston County Superior Court and the Suquamish Tribe cross-appealed. (Thurston County Superior No. 04-2-02138-1). Petitioner City of Bremerton, and Intervenors Overton, Manke and the Port of Bremerton were all dismissed from the case. On December 22, 2005, the Court entered a Decision of the Court Following Trial held December 2, 2005. In that Decision, the Superior Court upheld the Growth Board's decision regarding the deadline for the ten year update.
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> 4. Kitsap County appealed the Superior Court's decision to the Court of Appeals. On May 30, 2007, the Court of Appeals issued an Opinion under No. 35267-2-II. The Court of Appeals reversed the Growth Board's decision regarding the deadline for the ten year update pursuant to RCW 36.70A.130(3). The Court of Appeals issued a mandate on September 5, 2007, remanding the case to Thurston County Superior Court.
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> 5. In the intervening time period between this Board's FDO and the Court of Appeals' decision, Kitsap County has completed its ten year comprehensive plan update. The ten year comprehensive plan update was appealed in *Suquamish Tribe, et al. v. Kitsap County, ("Suquamish II")* CPSGMHB No. 07-3-0019c, Final Decision & Order (August 15, 2007) and Order on Reconsideration (September 13, 2007). The *Suquamish II* Petitioners have filed an appeal of the Growth Board's decision in Thurston County Superior Court. The issue of the County's compliance with the deadline in RCW 36.70A.130(3) was not at issue in *Suquamish II*, or on appeal of that case,.

6. The issue of whether Kitsap County has complied with RCW 36.70A.130(3) is moot since the County completed the update in December 2006. The next ten year update will be due in 2016.

7. Because the issues in this case have been rendered moot by subsequent actions, no further action is need before the Growth Board regarding this case.

II. DISCUSSION and ORDER

The Board issued its FDO in this matter on August 8, 2004, finding Kitsap County's Rural Wooded Lands policies non-compliant with the GMA. That determination was not appealed to the court, and the County has subsequently complied.

The question which was appealed to the superior court by Kitsap County was an assertion by the Board, in both the FDO and the Order on Reconsideration, that the statutory deadline for Kitsap County's comprehensive plan ten-year update was December 1, 2004. The Court of Appeals ruled that the Board's assertion was not an improper advisory opinion but that the Board misconstrued the statute. *Kitsap County v. Central Puget Sound Growth Management Hearings Board*, 138 Wn. App. 863, 877-880, 158 P.3d 638 (2007), clarified on denial of reconsideration (July, 2007). The Court of Appeals held that the ten-year review mandated by RCW 36.70A.130 is calculated from the date the UGA was first designated as compliant. *Id*. Therefore, the Board's opinion concerning the deadline for Kitsap County to complete its ten-year update was based on a mistaken construction of RCW 36.70A.130.

In the intervening time between the FDO and the Court of Appeals decision, Kitsap County has completed its ten-year update. *Suquamish Tribe, et al. v. Kitsap County*, CPSGMHB No. 07-3-0019c, Final Decision and Order (Aug. 15, 2007) and Order on Reconsideration (Sept. 13, 2007).

Upon review of the record, the decisions of the superior court and the Court of Appeals, and the stipulations of the parties, the Board determines that there are no further questions of compliance in this case. Therefore the Board ORDERS:

- The Pre-remand Hearing Conference scheduled for February 4, 2008, is **cancelled.**
- Case No. 04-3-0009c is **closed.**

So ORDERED this 30th day of January, 2008.

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

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Margaret A. Pageler
Board Member