CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

KING COUNTY, King County and Renton, and CITY OF RENTON, Intervenor, v. SNOHOMISH COUNTY, Respondent, and SNO-KING ENVIRONMENTAL ALLIANCE, Intervenor.	))	**Case No. 03-3-0011** ***(King County I)*** **ORDER ON COURT REMAND[1] OF CPSGMHB CASE NO. 03-3-0011** **[Re: Legal Issue No. 3]**

I. BACKGROUND

On October 13, 2003, the Central Puget Sound Growth Management Hearings Board issued a Final Decision and Order (the **FDO**) in *King County v. Snohomish County* ***(King County I)*** CPSGMHB Case No. 03-3-0011. In that decision, the Board agreed with King County and Renton King County and Intervenor City of Renton that Snohomish County's Ordinance No. 03-006 regulating Essential Public Facilities did not comply with the goals and requirements of the Growth Management Act. The Board directed Snohomish County to achieve compliance with the Act by February of 2004.

On October 22, 2003, Snohomish County adopted Emergency Ordinance No. 03-145 establishing a moratorium for permits for wastewater treatment facilities. In response to Ordinance 03-145, King County filed a new petition for review alleging that Snohomish County's moratorium also violated the essential public facilities provisions of the GMA, *King County v. Snohomish County* ***(King County II)*** CPSGMHB Case No. 03-3-0025.

[1] Thurston County Superior Court Case No. 04-2-00083-9, May 20, 2005.

On February 11, 2004, Snohomish County adopted two ordinances: Ordinance No. 04-020, which repealed the moratorium created by Ordinance No. 03-145, and Ordinance No. 04-019, which adopted new essential public facilities regulations in order to achieve compliance with the Board's direction in the *King County I* FDO.
On April 16, 2004, King County filed "Petition for Review and Request for Declaratory Ruling and Order of Invalidity on Snohomish County Ordinance 04-019." *King County v. Snohomish County (**King County III**)* CPSGMHB Case No. 04-3-0012.

On May 26, 2004, the Board issued an Order addressing all three cases (**Order Finding Continuing Noncompliance and Continuing Invalidity**). With respect to *King County I*, the Board found that Snohomish County's noncompliance was not cured by Ordinance No. 04-019 Snohomish County was ordered to take further action to achieve compliance with the essential public facilities goals and requirements of the Growth Management Act by September 22, 2004. As to the *King County II* case, the Board agreed with Snohomish County that the moratorium was no longer in effect and therefore challenges to Ordinance No. 03-145 were moot.

Snohomish County filed with Thurston County Superior Court a combined appeal of the Board's October 13, 2003 Final Decision and Order, *King County I*, and the Board's May 26, 2004 Order Finding Continuing Noncompliance and Continuing Invalidity, *King County I.*

On May 25, 2005, the Board received from Snohomish County a copy of Thurston County Superior Court Judge Paula Casey's "Order Denying in Part and Granting in Part Snohomish County's Appeal of the Central Puget Sound Growth Management Hearings Board's Decisions Invalidating Snohomish County Ordinances 03-006 and 04-019." **(Court Order**). The Court Order states in part: "Snohomish County's appeal on this issue, requiring the Board to rule on whether the Type 2 permit process in EPF Ordinance II [Ordinance No. 04-019] complies with the Growth Management Act, is GRANTED. This case is REMANDED back to the Board for a speedy determination on this issue." The Court Order requests the Board to make its determination on the compliance of the Type 2 process within 30 days or as soon thereafter as can be accommodated by the Board's schedule. And the Court Order directs the Board, following resolution of the Type 2 permit process issue, to establish a compliance hearing schedule including a date for a Snohomish County Statement of Actions to Comply with the Board's Decision and Order on Remand. The Court retained jurisdiction in this matter.

On May 27, 2005, the Board issued its Notice of Prehearing Conference on Thurston County Superior Court Remand of CPSGMHB Case No. 03-3-0011 (**NPC**), setting a Prehearing Conference date of June 9, 2005 immediately following the Prehearing Conference on CPSGMHB Case No. 05-3-0031 (***King County IV***) involving the same King County and Renton and Respondent.

On June 2, 2005, the Board received Respondent Snohomish County's Motion to Amend/Objection to Notice of Pre-hearing Conference.

On June 2, 2005, the Board received a letter from co-counsel for King County and Renton King County requesting the Board reschedule the Prehearing Conference on the Remand of *King County I* and the Prehearing Conference on *King County IV*.

On June 7, 2005, the Board issued its Corrected and Amended NPC correcting Section I Background, amending Section III Tentative Schedule.

On June 13, 2005, the Board received King County's Response to Snohomish County's Motion to Amend Prehearing Notice.

On June 13, 2005, the Board Administrative Officer transmitted to the Thurston County Superior Court a copy of the Brief of the City of Renton in Response to Snohomish County's Statement of Actions Taken to comply, received by the Board February 23, 2004, together with an amended Index and Certification of Record showing the inclusion of the Renton brief as Tab No. 27-a.

On June 17, 2005, the Board issued its Prehearing Order on the Remand (**Remand PHO**) identifying the legal issue to be addressed and setting a final schedule for this case.

On June 30, 2005, the Board conducted the **Remand Hearing** in Conference Room 1940, Seattle Municipal Tower, 700 Fifth Avenue, Seattle, WA. Board members Margaret Pageler and Bruce Laing, Presiding Officer, were present. The following parties attended: John Moffat and Millie Judge for Snohomish County; Patrick Mullaney and Verna Bromley for King County; and Lawrence Warren, for the City of Renton. Rachel Henrickson, Sabrina Wolfson, Heather Bowman and Brad Paul, externs with the Board, were also present. John Botelho of Byers & Anderson, Inc. provided court-reporting services. During the Remand Hearing Snohomish County distributed three illustrative handouts which were marked as follows: Outline of Mr. Moffat's presentation (**Snohomish Handout No. 1**); Page 4 of Amended Ordinance No. 03-006 and page 6 of Emergency Ordinance No. 04-0-19 (**Snohomish Handout No. 2**); Pages and 10 of Emergency Ordinance No 04-019 (**Snohomish Handout No. 3**). A copy of the Board's file log for the remand phase of this case was distributed by the Presiding Officer. The Parties and the Board agreed that any party who believes items are missing from the log, will notify the Board by close of business Tuesday, July 5, 2005[2]. The Remand Hearing opened at 11:00 a.m. and adjourned at 12:26 p.m.

II. THE REMANDED ISSUE

The Court Order states in part: "Snohomish County's appeal on this issue, requiring the Board to rule on whether the Type 2 permit process in EPF Ordinance II [Ordinance No. 04-019] complies with the Growth Management Act, is GRANTED. This case is REMANDED back to the Board for a speedy determination on this issue." The issue is stated in the Order Finding Continuing Noncompliance and Continuing Invalidity and in the Remand PHO as follows:

[2] The Board received no notice of items missing from the case log.

Does Ordinance No. 04-019 fail to be guided by and substantially interfere with the fulfillment of RCW 36.70A.020 (7) and (12) because the "Type 2" process would create unpredictable delay for decisions on EPF permits?

III. APPLICABLE LAW

A. Burden of Proof in a Compliance Proceeding with Invalidity

In the FDO, the Board found Snohomish County's adoption of Ordinance No. 03-006 noncompliant, entered a determination of invalidity and remanded the matter with direction to Snohomish County to take appropriate legislative action. Snohomish in its SATC points to Ordinance No. 04-019 as its action taken to comply with the FDO. Because the Board found that Snohomish County's prior action was not only noncompliant, but also invalid, Snohomish bears the burden of proof:

> *A county or city subject to a determination of invalidity* made under RCW 36.70A.300 or 36.70A.302 *has the burden of demonstrating that the ordinance or resolution it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of this chapter* under the standard of RCW 36.70A.302(1).

RCW 36.70A.320(4). (Emphasis added).

B. Permits and Essential Public Facilities Goals and Requirements of the Act

RCW 36.70A.020 provides in relevant part:

> (7) Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability. . . .
>
> (12) Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

RCW 36.70A.200 provides in relevant part:

> (1) The comprehensive plan of each county and city that is planning under RCW 36.70A.040 shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling

> facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.
> . . . .
>
> (5) No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

In reviewing the above cited statutory provisions, and after considering the facts and arguments of the parties, the Board adopted the following holding in the Final Decision and Order:

> . . . [N]o local government plan or regulation, including permit processes and conditions, may preclude the siting, expansion or operation of an essential public facility. Local plans and regulations may not render EPFs impossible or impracticable to site, expand, or operate, either by the outright exclusion of such uses, or by imposition of process requirements or substantive conditions that render the EPF impracticable. While there is no absolute time limit for how long an EPF permit review may take, an EPF permit process lacking provisions that assure reaching an ultimate decision may be found to be so unfair, untimely, and unpredictable as to substantively violate RCW 36.70A.020(7).

FDO, at 16.

IV. POSITIONS OF THE PARTIES AND BOARD ANALYSIS

A. Positions of the Parties

1. Scope of the Remand Hearing

Snohomish County first argues that the challenge brought by King County and Renton is outside the scope of the remand hearing. Snohomish County's Reply Brief for Compliance Hearing, at 18. Remand HOM, at 8-9. Snohomish County states that the Board is not to examine any issues relating to the permit criteria for an EPF application because all permit issues were resolved by the Court in favor of Snohomish County. Remand HOM, at 9. Snohomish County asserts that King County and Renton originally raised five issues: (1) Discretionary approvals, (2) the required recommendation from Snohomish County Tomorrow, (3) the required independent consultant review, (4) the existence of multiple permit hearings, and (5) the lack of a deadline for Snohomish County to make a decision. *Id*. at 11-12. Snohomish County contends that because King County and Renton did not complain in the original briefing in 2003 that the first EPF ordinance linked permit processing procedures to existing county codes, King County and Renton cannot raise the issue at this date. *Id*., at 12-13. Respondent argues that for this challenge to be good, the King County and Renton would have had to specifically raise the issue when filing the original challenge. *Id*. at 13.

Snohomish County asserts that the application for an EPF has always been linked to SCC 30.70 and 30.72 in the original code provisions and no change in the use of these sections has occurred between the Type 1 and Type 2 procedures. Remand HOM, at 13. Snohomish County contends that none of King County and Renton's current complaints relate to FDO findings of noncompliance. *Id*. at 14. Snohomish County states that the only complaint King County and Renton did make regarding now-contested codes 30.70 and 30.72 was that the 30.70 provision exempted EPF applications from the 120 day time period for a decision. *Id.* at 13. Snohomish County regards this as insufficient to support the claim King County and Renton now make. *Id.*

Renton and King County reply that they should be allowed to challenge problems with the new ordinance because 04-019 picks up provisions that create a timing issue. Remand HOM, at 28. King County and Renton assert that the provisions did not create the timing problem before, so they were not challenged at that time. *Id*. s argue that they should not be required to have the foresight to predict what Snohomish County would do to correct the problem if its original ordinance was found invalid. *Id*. at 56.

2. Unpredictable Delay.

King County and Renton merge their arguments. Together, King County and Renton argue that Snohomish County's revised ordinance 04-019 is invalid because it requires the use of conditional use permits that fail to provide a predictable timeline for EPF siting. King County and Renton claim that the ordinance is problematic because of onerous, time-consuming procedural regulations that create unpredictable delay. Renton Response to Snohomish County's SATC, at 6.

King County and Renton acknowledge that changes were made to the timeline, but contend that the problems identified in the FDO have not been fixed, and 04-019 violates 36.70A.020(7) because it is not timely, fair, and predictable. *Id*. Although the time line was reduced by 104 days because the new ordinance removes the initial decision of whether an EPF is difficult to site, the new ordinance creates a different initial decision with a 103 day waiting period, resulting in a gain of only one day. *Id*. at 4.

King County and Renton assert that the 120 day cap created in the second ordinance fails to restrict the timeline because of at least four problems with the ordinance that could cause unpredictable delay. *Id*. at 8. First, King County and Rentons contend that the new ordinance permits Snohomish County to exceed the 120 day period without penalty and lacks provisions that assure the County will reach an ultimate decision. *Id*. at 4. Second, the revised ordinance contains no provision for previously completed studies, and can allow Respondent to request a study be repeated as a delay tactic. Remand HOM, at 30. King County and Rentons assert that the appeal process in SCC 30.72 creates an iterative loop when an appeal to the County Council is remanded to the Hearing Examiner and appealed again to the County Council. King County and Rentons assert that this loop could continue without end. Renton Response, at 9. Finally, SCC 30.70.110(3)(c) re-

starts the 120 day timeline when a permit application is substantially revised by the applicant, which King County and Renton argue could result in a review period of far more than 120 days. *Id*. at 32.

Snohomish County contends that the revised ordinance does not create an unreasonable delay in violation of the Board's 10/13/03 FDO. Snohomish County's Reply Brief for Compliance Hearing, at 15. Respondent asserts the remaining one-year-plus delay is not necessarily unreasonable, according to the FDO. *Id.* Snohomish County contends that it has adopted a provision that assures an EPF decision will be made in a set amount of time, thus assuring predictability. *Id.*

Snohomish County asserts that the new ordinance 04-019 provides a clear process for an EPF conditional use permit with defined time limits and deletes the exception of EPFs from 120-day time limits. *Id*. The new ordinance provides a fixed determination for whether a proposal is properly identified within 103 days of filing, and the determination of local or regional status similarly has a 103 day maximum. *Id*. at 16. Snohomish County contends that the unending loop charge is without substance because the timeliness arguments are based on the old, not the new ordinance, which has clear, timely, predictable application provisions. *Id*. at 19. Respondent claims that King County and Renton include time periods for things like reconsideration before the Hearing Examiner and appeals to the County Council that are irrelevant as to whether Snohomish County's process is timely and predictable because they are outside the 120 day period. *Id*. Finally, Snohomish County asserts that SCC 30.70.110(3)(b) requires EPFs to be subject to 120 day deadline. *Id*. at 20.

B. Board Analysis

1. Scope of the Remand

The issue remanded to the Board is focused on the question of whether or not the "… 'Type 2' process would create an unpredictable delay for decisions on EPF permits." Remand Issue, *supra.* The Type 2 process for EPF as adopted in Ordinance No. 04-019 includes Snohomish County Code New Chapter 30.42D and incorporates preexisting provisions of several chapters and sections of the SCC[3]. Renton and King County have challenged the effects of provisions in SCC 30.70 and SCC 30.72. Snohomish County claims SCC 30.70 and SCC 30.72 are preexisting provisions not changed by the Ordinance and should not be subject to challenge. The Board finds that the combined effects of the new and existing provisions of the code, as adopted in Ordinance No. 04-019, bear on the question of unpredictable delay in the siting of EPFs. Therefore the Board will consider both new and existing provisions of the code.

Renton and King County assert that provisions in SCC 30.42D.080 contribute to the unpredictable delay of the Type 2 process. Renton Response, at 6. In the Order on Continuing Noncompliance the Board found that the criteria in SCC 30.42D.080 are not

[3] Ordinance 04-019 incorporates preexisting provisions from the following chapters and sections of the Snohomish County Code: 30.22.020; 30.42C; 30.70.030; 30.70.110; 30.72; 30.83; and 30.84.

"…so vague and over-reaching as to render the siting of local EPFs impracticable" and "… these criteria, as applied to local EPFs, comply with the GMA as interpreted by the Board in the FDO." Order Finding Continuing Noncompliance, at 16. The Board also found that the criteria in SCC 30.42D.090, with the exception of .090(1) and (2), are not impermissibly vague and over-reaching when applied to regional, state or federal EPFs. Id, at 17. The Board found the criteria in .090(1) and .090(2) to be noncompliant with RCW 36.70A.200(5). The Court Order reversed the Boards finding on .090(1) and .090(2)[4]. Court Order, at 4-5. The criteria in SCC 30.42D.080 and .090 are not within the scope of the remanded issue.

2. Unpredictable Delay.

a. SCC 30.70.110

The Board found that the conditional use process in Ordinance 03-006 did not comply with the Act because "…there appears to be no definite end to the iterative loops of the EPF hearings, appeal hearings, remands, etc. …" FDO, at 16. As an action to comply with the Board's finding, Snohomish County adopted Ordinance 04-019 which includes an amendment to SCC 30.70.110 requiring notice of a final decision on an EPF permit application be issued within 120 days from the date the permit application is determined to be complete.

SCC 30.70.110, as amended, provides:

> Processing timelines.
>
> (1) Notice of final decision on a project permit application shall issue within 120 days from when the permit application is determined to be complete, unless otherwise provided by this section or state law.
>
> (2) In determining the number of days that have elapsed after an application is complete, the following periods shall be excluded:
>
> (a) Any period during which the county asks the applicant to correct plans, perform required studies, or provide additional required information. The period shall be calculated from the date the county mails notification to the applicant of the need for additional information until the date the county determines whether the additional information satisfies the request for information, or 14 days after the applicant supplies the information to the county, whichever is earlier. If the information submitted by the applicant under this subsection is insufficient, the county shall mail notice to the applicant of the deficiencies and the provisions of this subsection shall apply as if a new request for information had been made;

[4] The Board also made findings of noncompliance on criteria in 30.42C.100 SCC. However, the Court Order reversed the Board because EPFs are exempt from the provisions of 30.42C.100.

(b) Any period during which an environmental impact statement is being prepared;

(c) A period, not to exceed 30 calendar days, during which a code interpretation is processing in conjunction with an underlying permit application pursuant to chapter 30.83 SCC.

(d) The period specified for administrative appeals of project permits;

(e) Any period during which processing of an application is suspended pursuant to SCC 30.70.045(1)(b); and

(f) Any period of time mutually agreed upon by the applicant and the county.

(3) The time periods established by this section shall not apply to a project permit application:

(a) That requires an amendment to the comprehensive plan or a development regulation in order to obtain approval;

(b) That requires approval of a new fully contained community as provided in RCW 36.70A.350, a master planned resort as provided in RCW 36.70A.360;

(c) That is substantially revised by the applicant, in which case a new 120-day time period shall start from the date at which the revised project application is determined to be complete;

(d) That requires approval of a development agreement by the county council;

(e) When the applicant consents to an extension; or

(f) During any period necessary for reconsideration of a hearing examiner's decision.

(4) Subject to all other requirements of this section, notice of final decision on an application for a boundary line adjustment shall be issued within 45 days after the application is determined complete.

(5) The county shall notify the applicant in writing if a notice of final decision on the project has not been made within the time limits specified in this section. The notice shall include a statement of reasons why the time limits have not been met and an estimated date of issuance of a notice of final decision.

(6) Failure of the county to make a final decision within the timelines specified by this chapter shall not create liability for damages.

Renton and King County argue that the same unpredictable delays found noncompliant in Ordinance 03-006 will result from the provisions of SCC 30.70.110. They point to the exclusion of the time required for the following activities from the 120 day decision time: (2)(a) – Preparation of required studies and additional required information; (2)(d) – Administrative appeals; (3)(c) – Substantial revision of a project permit application starts a new 120 day decision period. Renton Response, at 7.

The Board agrees that SCC 30.70.110 provides for interruptions in the running of the 120 day time limit. Some of these interruptions are for time periods which cannot be predicted. The provisions are appropriate to the review of CUPs in general. The issue is whether or not applying these unpredictable delays to the review of a regional, state or federal EPF complies with the Act.

The Board stated in the FDO that it *"… does not take issue with the use of the CUP mechanism, per se."* FDO, at 16. The Court Order states *"When taken together, the provisions of the Growth Management Act (RCW 36.70A.200(1) and 36.70A.200(5)) mean the county may not preclude the siting of essential public facilities. However, a county does have a role in the siting of essential public facilities. The County may impose reasonable conditions on the essential public facilities and may require reasonable mitigation in their development."* The Board finds that it is appropriate for Snohomish County to use the CUP process to impose **reasonable** conditions and to require **reasonable** mitigation. The provisions of SCC 30.70.110 are appropriate for obtaining information to identify reasonable conditions and mitigation.

Renton and King County arguments regarding unpredictable delays appear to be based in part on the premise that Snohomish County may use the provisions of SCC 30.70.110 to intentionally delay the siting of an EPF. The Board does not accept that assumption. The Board does not find a basis for concluding the provisions of SCC 30.70.110 would cause delays that are noncompliant with the Act.

b. SCC 30.72 – Type 2 Permits And Decisions – Hearing Examiner

Renton and King County assert that SCC 30.72 does not specify a time limit for the preparation of the department report to the examiner; and this omission could cause unpredictable delay. Renton Response, at 7.

The complete text of SCC 30.72 is contained in Appendix – II, *infra*. SCC 30.72 025 summarizes the Type 2 process as follows:

> Type 2 decisions are made by the hearing examiner based on a report from the department and information received at an open record hearing, except for conditions imposed pursuant to chapter 30.51 SCC[5], which shall be included in the hearing examiner's decision. The hearing examiner's decision on a Type 2 application is a final decision subject to appeal to the county council, except for shoreline permits issued under chapter 30.44 SCC, and conditions imposed under chapter 30.51 SCC. Appeals of shoreline substantial development permits, shoreline conditional use permits, and shoreline variances are made directly to the state shorelines hearings board.

[5] Chapter 30.51 SCC – Development in Seismic Hazard Areas.

The department report, describing how the application meets or fails to meet applicable criteria and containing recommendations to the hearing examiner, must be made available to the public and filed with the examiner at least seven days prior to the examiner's hearing. SCC 30.72.040. The examiner's decision must be issued within 15 days from the close of the hearing, but not later than 120 days from the determination that the application is complete. SCC 30.72.060. Therefore the maximum time the department has to file its report with the examiner is 97 days from the determination that the application is complete.[6] The Board does not agree that there is no time limit on the filing of the department report.

Renton and King County argue that SCC 30.72 creates an iterative loop when an appeal to the council is remanded by the council to the examiner, and the examiner's decision on remand is again appealed to the council. Renton Response, at 9.

The hearing examiner decision may be appealed to the county council by any aggrieved party of record within 14 days following the decision. SCC 30.72.070. Within seven days following the close of the appeal period the clerk must mail notice of the date of the council appeal hearing. SCC 30.72.100. The council may affirm or reverse the examiner decision, or remand the matter to the examiner. SCC 30.72.120. The clerk must mail the council decision to parties of record within 15 calendar days after conclusion of the hearing, but not later than 60 calendar days from the last day of the appeal period. *Id*. When the council remands a matter to the hearing examiner, the examiner's response to the remand can be appealed to the council under the same process as the original appeal. SCC 30.72.125. The issues on appeal are limited to the issues remanded to the examiner. *Id.*

The Board agrees that the above described appeal and remand process could result in a circular process, an iterative loop. However, a repetitive loop would only occur if the process were used to deliberately delay a decision on an application. The Board cannot assume the County would act in bad faith to intentionally delay a decision.

V. CONCLUSIONS

- In the FDO the Board stated that CUPs are acceptable for local decisions, but questionable for regional, state, or federal EPFs. In the case of these regional, state, or federal EPFs, the Board held that there can be no second guessing by a local jurisdiction. However, the Court order held that a county may impose reasonable conditions and require mitigation. Further, the Court held that it is acceptable for a county to require the sponsor of a regional EPF to demonstrate that they have provided a meaningful opportunity for public participation in the siting decision.

- The CUP Type 2 process is sound for traditional CUP subject matter. The CUP process is designed to identify conditions and mitigations, and therefore is a

[6] The tabulation of the elapsed number of days is subject to the provisions of SCC 30.70.110 discussed above.

logical choice by the County for review of EPFs. While the CUP process may result in some unpredictable delays, these delays are the result of having an appropriate process for information gathering and administrative appeals.

- Under the Type 2 process, the Council decision on an appeal from the Hearing Examiner may be to remand to the Examiner. The Examiner's decision on a remanded matter can then be appealed back to the Council. While this process could result in an iterative loop, a repetitive cycle of remands and appeals could occur only if the process is used to deliberately delay a decision on an application. The Board cannot assume this kind of bad faith.

- Ordinance No. 04-019 does not fail to be guided by and substantially interfere with the fulfillment of RCW 36.70A.020 (7) and (12) because the Type 2 process would create unpredictable delay for decisions on EPF permits. Issue No. 3 is **dismissed.**

- The Court Order directs the Board to establish a compliance schedule to comply with the Court's decision and the Board's Order on Remand. The Court Order sustained the Boards finding, in the Order Finding Continuing Noncompliance and Continuing Invalidity, that Ordinance No. 04-019 **fails to comply** with RCW 36.70A.200 and **substantially interferes** with fulfillment of Goals 7 and 12 because its definitions draw an inappropriate distinction between "local" EPFs and "state or regional" EPFs. The Order below amends the compliance schedule established in the Order Finding Continuing Noncompliance and Continuing Invalidity.

VI. ORDER

Based upon review of the FDO, the Order Finding Continuing Noncompliance Continuing Invalidity, the Order of the Superior Court, Ordinance No. 04-019, SCC 30.70, SCC 30.72, the Briefs of the parties, and the Act the Board Orders:

- Issue No.3 is **dismissed.**

- The compliance schedule established in the Order Finding Continuing Noncompliance Continuing Invalidity is **amended** as follows:

    1. The Board establishes **4:00 p.m.** on **Wednesday, November 23, 2005** as the deadline for Snohomish County to take legislative action to bring the EPF development regulations into compliance with the goals and requirements of the Growth Management Act as interpreted in this order and the FDO.

    2. By **Wednesday, December 7, 2005**, at **4:00 p.m**., Snohomish County shall submit to the Board, with a copy to the other parties, an original and four copies of its Third Statement of

Actions Taken to Comply (the **Third SATC**) and an Index of the Record on Remand. Attached to the Third SATC shall be a copy of any legislative action taken in response to this Order.

3. By **Wednesday, December 14, 2005**, at **4:00 p.m.**, King County and Renton King County and Intervenor City of Renton and SKEA shall submit to the Board, with a copy to Snohomish County, an original and four copies of any Response to the Third SATC. The parties may attach to Response Briefs any exhibits from the Index of the Record on Remand.

4. By **Wednesday, December 21, 2005,** at **4:00 p.m.**, Snohomish County shall submit to the Board, with a copy to the other parties, an original and four copies of any Reply to the Responses to the Third SATC. In its Reply, Snohomish County may attach exhibits from the Index of the Record of Remand.

5. The Board schedules a **Third Compliance Hearing** in this matter for **Monday, January 9, 2006**, **10:00 a.m.** The Third Compliance Hearing will be held in the conference room adjacent to the Board's office at Suite 2470, Bank of California Building, 900 Fourth Avenue, in Seattle.

6. A copy of this Order shall be transmitted to the Governor and to the Thurston County Superior Court.

So ORDERED this 29th day of July, 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____
Bruce C. Laing, FAICP
Board Member

_____
Edward G. McGuire, AICP
Board Member

_____
Margaret A. Pageler
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.

APPENDIX– I

Procedural History

On October 13, 2003, the Central Puget Sound Growth Management Hearings Board issued a Final Decision and Order (the **FDO**) in *King County v. Snohomish County* ***(King County I)*** CPSGMHB Case No. 03-3-0011. In that decision, the Board agreed with King County and Renton King County and Intervenor City of Renton that Snohomish County's Ordinance No. 03-006 regulating Essential Public Facilities did not comply with the goals and requirements of the Growth Management Act. The Board directed Snohomish County to achieve compliance with the Act by February of 2004.

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On February 11, 2004, Snohomish County adopted two ordinances: Ordinance No. 04-020, which repealed the moratorium created by Ordinance No. 03-145, and Ordinance No. 04-019, which adopted new essential public facilities regulations in order to achieve compliance with the Board's direction in the *King County I* FDO.

On April 16, 2004, King County filed "Petition for Review and Request for Declaratory Ruling and Order of Invalidity on Snohomish County Ordinance 04-019." *King County v. Snohomish County (**King County III**)* CPSGMHB Case No. 04-3-0012.

On May 26, 2004, the Board issued an Order addressing all three cases. With respect to *King County I*, the Board found that Snohomish County's noncompliance was not cured by Ordinance No. 04-019. Snohomish County was ordered to take further action to achieve compliance with the essential public facilities goals and requirements of the Growth Management Act by September 22, 2004. As to the *King County II* case, the Board agreed with Snohomish County that the moratorium was no longer in effect and therefore challenges to Ordinance No. 03-145 were moot.

Snohomish County filed with Thurston County Superior Court a combined appeal of the Board's October 13, 2003 Final Decision and Order, *King County I,* and the Board's May 26, 2004 Order Finding Continuing Noncompliance and Continuing Invalidity, *King County I.*

On May 25, 2005, the Board received from Snohomish County a copy of Thurston County Superior Court Judge Paula Casey's "Order Denying in Part and Granting in Part Snohomish County's Appeal of the Central Puget Sound Growth Management Hearings Board's Decisions Invalidating Snohomish County Ordinances 03-006 and 04-019." **(Court Order**). The Court Order states in part: "Snohomish County's appeal on this issue, requiring the Board to rule on whether the Type 2 permit process in EPF Ordinance

II [Ordinance No. 04-019] complies with the Growth Management Act, is GRANTED. This case is REMANDED back to the Board for a speedy determination on this issue." The Court Order requests the Board to make its determination on the compliance of the Type 2 process within 30 days or as soon thereafter as can be accommodated by the Board's schedule. And the Court Order directs the Board, following resolution of the Type 2 permit process issue, to establish a compliance hearing schedule including a date for a Snohomish County Statement of Actions to Comply with the Board's Decision and Order on Remand. The Court retained jurisdiction in this matter.

On May 27, 2005, the Board issued its Notice of Prehearing Conference on Thurston County Superior Court Remand of CPSGMHB Case No. 03-3-0011 (**NPC**), setting a Prehearing Conference date of June 9, 2005 immediately following the Prehearing Conference on CPSGMHB Case No. 05-3-0031 (***King County IV***) involving the same Petitioners and Respondent.

On June 2, 2005, the Board received Respondent Snohomish County's Motion to Amend/Objection to Notice of Pre-hearing Conference.

On June 2, 2005, the Board received a letter from co-counsel for King County and Renton King County requesting the Board reschedule the Prehearing Conference on the Remand of *King County I* and the Prehearing Conference on *King County IV*.

On June 7, 2005, the Board issued its Corrected and Amended NPC correcting Section I Background, amending Section III Tentative Schedule.

On June 13, 2005, the Board received King County's Response to Snohomish County's Motion to Amend Prehearing Notice.

On June 13, 2005, the Board Administrative Officer transmitted to the parties in this case an electronic-mail message containing a Prehearing Conference Agenda with attachments.

On June 13, 2005, the Board Administrative Officer transmitted to the Thurston County Superior Court a copy of the Brief of the City of Renton in Response to Snohomish County's Statement of Actions Taken to comply, received by the Board February 23, 2004, together with an amended Index and Certification of Record showing the inclusion of the Renton brief as Tab No. 27-a.

On June 16, 2005, the Board conducted a Prehearing Conference (**RPHC**) in Room 2094, 900 Fourth Avenue, Seattle, WA. Board members present were Edward McGuire, Margaret Pageler and Bruce Laing, Presiding Officer. The following parties attended: John Moffat and Laura C. Kisielius for Snohomish County; J. Tayloe Washburn for King County; Lawrence J. Warren, for the City of Renton; Corrine Hensley for Sno-King Environmental Alliance. Rachel Henrickson, Sabrina Wolfson and Heather Bowman, externs with the Board, were also present. The Prehearing Conference commenced at 11:50 a.m. The parties acknowledged disclosures made by Board members Pageler and

Laing at the Prehearing Conference on CPSGMHB Case No. 05-3-0031, which immediately preceded this Prehearing Conference and involved the same parties. The Board and the parties discussed the legal issue to be addressed by the Board, the documents which the Board will review in deciding the legal issue, the parties to the remand proceeding, the participants in the remand hearing, the schedule for the remand proceedings, and the location and format for the remand hearing. The parties presented oral argument to the Board on the question of whether the Board would allow additional briefing. The Board ruled that additional briefing will not be allowed. The RPHC adjourned at 12:15 p.m.

On June 17, 2005, the Board issued its Prehearing Order on the Remand (**Remand PHO**) identifying the legal issue to be addressed and setting a final schedule for this case.

On June 30, 2005, the Board conducted the **Remand Hearing** in Conference Room 1940, Seattle Municipal Tower, 700 Fifth Avenue, Seattle, WA. Board members Margaret Pageler and Bruce Laing, Presiding Officer, were present. The following parties attended: John Moffat and Millie Judge for Snohomish County; Patrick Mullaney and Verna Bromley for King County; and Lawrence Warren, for the City of Renton. Rachel Henrickson, Sabrina Wolfson, Heather Bowman and Brad Paul externs with the Board, were also present. John Botelho of Byers & Anderson, Inc. provided court-reporting services. During the Remand Hearing Snohomish County distributed three illustrative handouts which were marked as follows: Outline of Mr. Moffat's presentation (Snohomish Handout No. 1); Page 4 of Amended Ordinance No. 03-006 and page 6 of Emergency Ordinance No. 04-0-19 (Snohomish Handout No. 2); Pages and 10 of Emergency Ordinance No 04-019 (Snohomish Handout No. 3). A copy of the Boards file log for the remand phase of this case was distributed by the Presiding Officer. The Parties and the Board agreed that any party who believes items are missing from the log, will notify the Board by close of business Tuesday, July 5, 2005. The Remand Hearing opened at 11:00 a.m. and adjourned at 12:26 p.m.

APPENDIX - II

Chapter 30.72

TYPE 2 PERMITS AND DECISIONS – HEARING EXAMINER

30.72.010 Purpose and applicability

This chapter describes decision-making and appeal procedures and applies to all Type 2 permits and decisions.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.020 Type 2 permits and decisions.

The following are processed as Type 2 permits and decisions:
(1) Conditional use permit and major revisions;
(2) Rezones (site-specific);
(3) Official site plan or preliminary plan approval when combined with a rezone request in FS, IP, BP, PCB, T, RB, RFS, and RI zones;
(4) Flood hazard area variance, if combined with a Type 2 application;
(5) Preliminary subdivision approval and major revisions;
(6) Planned residential developments;
(7) Short subdivision with dedication of a new public road;
(8) Shoreline substantial development, conditional use, or variance permit if forwarded pursuant to SCC 30.44.240
(9) Shoreline substantial development permit rescission; and
(10) Boundary line adjustments as provided in 30.41E.020 SCC.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.025 Type 2 process overview.

Type 2 decisions are made by the hearing examiner based on a report from the department and information received at an open record hearing, except for conditions imposed pursuant to chapter 30.51 SCC, which shall be included in the hearing examiner's decision. The hearing examiner's decision on a Type 2 application is a final decision subject to appeal to the county council, except for shoreline permits issued under chapter 30.44 SCC, and conditions imposed under chapter 30.51 SCC. Appeals of shoreline substantial development permits, shoreline conditional use permits, and shoreline variances are made directly to the state shorelines hearings board.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.030 Notice and timing of open record hearing.

(1) Notice of the open record public hearing on a Type 2 application shall be provided at least 15 days prior to the hearing date.
(2) In setting hearing dates, the department shall consider the time necessary for comment and appeal periods on any related SEPA decision and for the hearing examiner to conduct the hearing and issue a decision within the time period established in SCC 30.70.110.
(3) Notice of the public hearing shall contain a description of the proposal and list of permits requested, the county file number and contact person, the date, time, and place for the hearing, and any other information determined to be appropriate by the department.
(4) Notice shall be provided by publishing, mailing, and posting in the manner prescribed by SCC 30.70.045.
(5) If the appeal period for a SEPA threshold determination has not expired when the notice of the hearing is provided, the notice shall state that any timely SEPA appeal shall be heard at the scheduled open record hearing.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.040 Report of department and transfer of file.

(1) Following expiration of required comment periods on the notice of application, and to complete project review, the department shall coordinate and assemble the reviews of other county departments and governmental agencies having an interest in the application. The department shall prepare a report describing how the application meets or fails to meet the applicable decision criteria. The report shall include recommended conditions, if appropriate, and a recommendation to the hearing examiner on the action to be taken on the application.
(2) The report shall be filed with the hearing examiner and made available for public review and copying at least seven days before the open record hearing.
(3) The department shall transfer the file to the hearing examiner's office concurrently with transmittal of the report.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.050 Open record hearing procedure on Type 2 application.

(1) The hearing examiner shall conduct an open record hearing on the Type 2 application.
(2) The department shall provide a summary of the report of the department and the contents of the project file.
(3) Any person may participate in the hearing and shall have the following rights, as limited by the hearing examiner rules of procedure:
(a) To call, examine, and cross-examine witnesses;
(b) To introduce documentary or physical evidence; and
(c) To present rebuttal evidence.

(4) All hearing testimony shall be taken under oath.
(5) An electronic transcript shall be made of the open record hearing.
(6) When an appeal of a Type 1 decision related to the Type 2 application has been filed, the open record hearing shall serve as both the appeal hearing and the predecision hearing.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.060 Hearing examiner's decision on Type 2 application.

(1) A decision on the Type 2 application shall be issued within 15 calendar days of the conclusion of a hearing, and not later than 120 days after a determination of completeness pursuant to SCC 30.70.110, unless the appellant agrees in writing to extend the time period or the time period has been extended under some other authority.
(2) If an appeal of a Type 1 administrative decision was heard at the open record predecision hearing, a final decision on the Type 1 appeal shall be issued concurrently with the Type 2 decision.
(3) The hearing examiner may grant, grant in part, return to the applicable department and applicant for modification, deny without prejudice, deny, or grant with such conditions or modifications as the hearing examiner finds appropriate based on the applicable decision criteria.
(4) The decision shall include findings based upon the record and conclusions therefrom which support the decision.
(5) Reconsideration of the hearing examiner's decision may be requested only in accordance with SCC 30.72.065.
(6) The hearing examiner's decision shall include information on, and any applicable time limitations for, requesting reconsideration or for appealing the decision.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.062 Notice of hearing examiner's decision on Type 2 application.

Notice of the hearing examiner's decision, which may be the decision itself, shall be provided as follows:
(1) By regular mail or inter-office mail, as appropriate, to the applicant and other parties of record; and
(2) To the clerk of the council.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.065 Reconsideration of Type 2 decision.

(1) Any aggrieved party of record may file a written petition for reconsideration with the hearing examiner within 10 calendar days following the date of the hearing examiner's written decision. The King County and Renton for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing. The timely filing of a petition for reconsideration shall stay the hearing

examiner's decision until such time as the petition has been disposed of by the hearing examiner.

(2) The grounds for seeking reconsideration shall be limited to the following:

(a) The hearing examiner exceeded the hearing examiner's jurisdiction;

(b) The hearing examiner failed to follow the applicable procedure in reaching the hearing examiner's decision;

(c) The hearing examiner committed an error of law;

(d) The hearing examiner's findings, conclusions and/or conditions are not supported by the record;

(e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or

(f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

(3) The petition for reconsideration must :

(a) Contain the name, mailing address, and daytime telephone number of the King County and Renton, or the King County and Renton's representative, together with the signature of the King County and Renton or of the King County and Renton's representative;

(b) Identify the specific findings, conclusions, actions, and/or conditions for which reconsideration is requested;

(c) State the specific grounds upon which relief is requested;

(d) Describe the specific relief requested; and

(e) Where applicable, identify the specific nature of any newly discovered evidence or changes proposed.

(4) The petition for reconsideration shall be decided by the same hearing examiner who rendered the decision, if reasonably available. The hearing examiner shall provide notice of the decision on reconsideration in accordance with SCC 30.72.062. Within 14 days the hearing examiner shall:

(a) Deny the petition in writing;

(b) Grant the petition and issue an amended decision in accordance with the provisions of SCC 30.72.060 following reconsideration;

(c) Accept the petition and give notice to all parties of record of the opportunity to submit written comment. Parties of record shall have 10 calendar days from the date of such notice in which to submit written comments. The hearing examiner shall either issue a decision in accordance with the provisions of SCC 30.72.060 or issue an order within 15 days after the close of the comment period setting the matter for further hearing. If further hearing is ordered, the hearing examiner's office shall mail notice not less than 15 days prior to the hearing date to all parties of record; or

(d) Accept the petition and set the matter for further open record hearing to consider new evidence, proposed changes in the application and/or the arguments of the parties. Notice of such further hearing shall be mailed by the hearing examiner's office not less than 15 days prior to the hearing date to all parties of record. The hearing examiner shall issue a decision following the further hearing in accordance with the provisions of SCC 30.72.060.

(5) A decision which has been subjected to the reconsideration process shall not again be subject to reconsideration; provided that a decision which has been revised on

reconsideration from any form of denial to any form of approval with preconditions and/or conditions shall be subject to reconsideration.

(6) The hearing examiner may consolidate for action, in whole or in part, multiple petitions for reconsideration of the same decision where such consolidation would facilitate procedural efficiency.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.070 Appeal of Type 2 decision.

(1) All Type 2 hearing examiner decisions may be appealed to the county council except for shoreline substantial development permits and permit recisions, shoreline conditional use permits, and shoreline variances, which may be appealed to the state shorelines hearings board pursuant to the provisions of RCW 90.58.180.

(2) An appeal to the county council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the county council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the county council shall be limited to those issues raised in the petition for reconsideration.

(3) Any aggrieved party of record may appeal a decision on reconsideration.

(4) Appeals shall be addressed to the county council and shall be filed in writing with the department within 14 days following the date of the hearing examiner's decision.

(5) A filing fee of $500 shall be submitted with each appeal filed; provided that the fee shall not be charged to a department of the county. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 03-014, March 19, 2003, Eff date April 14, 2003)

30.72.075 Summary dismissal of a Type 2 appeal.

(1) The council may summarily dismiss an appeal in whole or in part without hearing if it determines that the appeal is untimely, incomplete, without merit on its face, frivolous, beyond the scope of the council's jurisdiction, or brought merely to secure a delay. The council may also summarily dismiss an appeal based on lack of standing after allowing the appellant a reasonable period in which to reply to the challenge.

(2) Except in extraordinary circumstances, summary dismissal orders shall be issued within 15 days following receipt of either a complete appeal or a request for issuance of such an order, whichever is later.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.080 Requirements for filing a Type 2 appeal.

(1) An appeal must be in writing and contain the following:
(a) A detailed statement of the grounds for appeal and the facts upon which the appeal is based, including references to specific hearing examiner findings or conclusions, and to exhibits or oral testimony in the record;
(b) Argument in support of the appeal; and
(c) The name, mailing address, and daytime telephone number of each appellant, or each appellant's representative, together with the signature of at least one of the appellants or of the appellants' representative.
(2) The grounds for filing an appeal shall be limited to the following:
(a) The decision exceeded the hearing examiner's jurisdiction;
(b) The hearing examiner failed to follow the applicable procedure in reaching the decision;
(c) The hearing examiner committed an error of law; or
(d) The hearing examiner's findings, conclusions, and/or conditions are not supported by substantial evidence in the record.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.085 Effect of appeal.

Timely filing of an appeal shall stay the effective date of the hearing examiner's decision until such time as the appeal is decided by the council or withdrawn.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.090 Consolidation of multiple appeals.

The council shall consolidate multiple appeals of the same action.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.100 Notice of Type 2 appeal.

(1) Within seven calendar days following the close of the appeal period and upon receipt of a timely filed and complete appeal, the council clerk will mail notice of the appeal and of the date, time, and place of the closed record appeal hearing to all parties of record.
(2) The dates for filing written arguments with the council shall be included in the hearing notice as follows:
(a) Parties of record may file written arguments with the council until 5:00 p.m. on the fourteenth day following the date of the hearing notice mailed pursuant to SCC 30.72.100(1); and
(b) An appellant may file written rebuttal arguments with the council until 5:00 p.m. on the twenty-first day following the date of the hearing notice mailed pursuant to SCC 30.72.100(1).

(3) The hearing notice shall be sent for publication in the official county newspaper the same day the notice of appeal is sent to parties of record.
(4) Within five days of mailing of the hearing notice pursuant to SCC 30.72.100(1), the applicant shall conspicuously post notice of the hearing on the signs in accordance with of SCC 30.70.045.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.110 Type 2 closed record appeal hearing.

(1) An appeal before the county council shall be conducted as a closed record appeal. The hearing shall be limited to the record from the hearing examiner and all written argument timely filed with the council. New evidence shall not be allowed unless specifically requested by the council and consistent with the limitation of subsection (2) below.
(2) Appeal issues shall be limited to those expressly raised in the written appeal. No new appeal issues may be raised or argued after the close of the time period for filing the appeal.
(3) Parties of record may file written argument according to the dates set forth in the notice of the appeal hearing.
(4) Any party of record may present oral argument at the hearing.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.120 County council decision on Type 2 appeal.

(1) The council's decision shall be issued in writing and entered into the record of the proceedings. The decision of the county council shall set forth findings and conclusions that support the council decision and may adopt any or all of the findings or conclusions of the hearing examiner.
(2) The council may affirm the decision of the hearing examiner, reverse in whole or in part, or may remand the matter to the hearing examiner in accordance with the council's findings and conclusions.
(3) The council clerk shall mail copies of the decision to all parties of record within 15 calendar days after the conclusion of the hearing, but not later than 60 calendar days from the last day of the applicable appeal period, unless the applicant agrees to extend the time period or the time period is extended under some other authority.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.125 Effect of remand.

(1) The effect of remand on the decision of the hearing examiner shall be specified in the county council's decision. A decision by the hearing examiner in response to the remand order shall be issued in the same manner as the original decision.
(2) A remand is not a final decision on the appeal, but shall serve as a decision for purposes of applicable time limitations contained in SCC 30.72.120(3). Issuance of the

decision by the hearing examiner in response to the remand order shall commence a new appeal period pursuant to SCC 30.72.070. Issues on appeal shall be limited to the issues remanded to the hearing examiner.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.130 Effect and appeal of final council decision on Type 2 appeal.

(1) The county council's decision on a Type 2 appeal is the final decision of the county except where a matter has been remanded to the hearing examiner. A final council decision may be appealed to superior court within 21 days of issuance of the decision in accordance with chapter 36.70C RCW.

(2) The cost of transcribing the record of proceeding, of copying photographs, video tapes and any oversized documents, and of staff time spent in copying and assembling the record and preparing the return for filing with the court shall be borne by the party filing the petition. If more than one party appeals the decision, the costs of preparing the record shall be borne equally among the appellants.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.72.140 Vacation of permits or approvals.

(1) Requests to vacate a permit shall be made in writing to the department of planning and development services.

(2) The director shall determine if the conditions in 30.42C.208 are present prior to authorizing the vacation.

(3) Vacation of any permit shall be documented by the filing of a notice of land use permit vacation with the county auditor on a form provided by the department of planning and development services.

(Added Amended Ord. 05-022, May 11, 2005, Eff date May 28, 2005)

30.72.150 Review or revocation of certain permits or approvals.

(1) If the director determines that a permit or approval is in material violation of this title, the director may initiate proceedings before the hearing examiner to review or revoke the permit or approval, in whole or in part.

(2) The hearing examiner shall hold a hearing in accordance with SCC 30.71.100. The director shall provide notice in accordance with SCC 30.70.050.

(3) The hearing examiner, upon good cause shown, may direct the department to issue a stop work order to temporarily stay the force and effect of all or any part of an issued permit or approval until the final decision of the hearing examiner is issued.

(Added Amended Ord. 05-022, May 11, 2005, Eff date May 28, 2005)