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 AMENDING COMPLIANCE SCHEDULE**

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) was at issue.

The FDO provided, in relevant part:

- 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:

1. By no later than **June 30, 2006**, Kitsap County shall take appropriate legislative action to comply with the review and revision requirements of RCW 36.70A.130(3) for its urban growth area designations and permitted urban densities.

2. By no later than **July 14, 2006**, Kitsap County shall file with the Board an original and four copies of the legislative enactment(s) adopted by Kitsap County to comply with RCW 36.70A.130(3) along with a statement of how the enactments comply with RCW 36.70A.130 (**compliance statement**). The County shall simultaneously serve a copy of the legislative enactment(s) and compliance statement on Petitioner Harless.

3. By no later than **July 28, 2006**, Petitioner Harless *may* file with the Board a Petitioner's Response to the County's compliance statement and the legislative enactments. Petitioner shall simultaneously serve a copy of such comment on the County.

4. 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.]

If Kitsap County takes the required legislative action prior to the June 30, 2006 deadline set forth in this Order, the County may file a motion with the Board requesting an adjustment to this compliance schedule.

FDO, at 38-39.

On August 12, 2005, the Board received Kitsap County's Motion to Extend the Compliance Deadline" (**Kitsap Motion to Extend**). The County requested that its review and decision related to the update of its UGAs be extended until December 31, 2006.[1]

On August 23, 2005, the Board received Petitioner Harless' Response to County's Motion to Extend the Compliance Deadline (**Harless Response**).

[1] This date corresponds to the date requested in a separate Kitsap County case – CPSGHMB Case No. 04-3-0009c (***Bremerton II).***

On September 1, 2005, the Board issued its Order Scheduling Consideration of Kitsap County's Motion to Extend the Compliance Deadline. The Board's Order set a hearing on the Kitsap Motion to Extend, coinciding with the compliance hearing in *Bremerton II*. The Board's Order also provided:

> To provide for orderly consideration of Kitsap County's Motion to extend in Consolidated Case No. 05-3-0031c concurrently with compliance proceedings in *Bremerton II*, Kitsap County will serve copies of its existing work plan and proposed work plan on Petitioner Harless by September 19, 2005.
>
> Petitioner Harless may file a written response to County's plans by September 23, 2005.
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> The Board will hear and consider the County's motion in this case at 10:00 a.m. September 27, 2005, in the Board's offices, at the *Bremerton II* Compliance Hearing.

Order Scheduling Consideration, at 3.

On September 19, 2005, the Board received Kitsap County's Submittal of Proposed Work Plans (**Kitsap Work Plans**).

On September 22, 2005, the Board receive Petitioner Harless' and KCRP's Comments on County's Submittals of Proposed Work Plans (**Harless Comments)**.

On September 27, 2005, beginning at 10:00 a.m. the Board conducted the hearing on the motion to extend the compliance schedule in this matter, together with the compliance hearing in *Bremerton II*. The hearings were held at the Board's offices in Seattle. Board member Bruce Laing conducted the hearing; Board members Margaret Pageler and Ed McGuire were present. Petitioner Jerry Harless appeared *pro se*. Shelley Kneip represented Respondent Kitsap County, accompanied by County Planner Cindy Baker.[2] Court reporting services were provided by Katie Eskew of Byers and Anderson, Inc. No transcript of the proceeding was ordered.

II. DISCUSSION

Positions of the Parties

Kitsap County requests an extension until December 31, 2006, to complete review and adoption of updated UGAs. The County states that it has prepared a request for proposals for consultant management of the project that includes an estimated time frame for completion beyond the compliance date of June 30, 2006, in the FDO. Kitsap Motion to

[2] Others in attendance at the hearing primarily represented parties to *Bremerton II*: Suquamish Tribe was represented by Mark Bubenik and Martha Sullivan; Manke Lumber Company, et al, were represented by Elaine Spencer; the City of Bremerton was represented by Carol Morris; Charlie Burrow and Tom Donnelly of KCRP attended; and Board assistant Rebeckah Cook was also present.

Extend, at 1.[3] The County states that consultant assistance is necessary because of "100% turnover" of planning staff over the past year. Kitsap Work Plans, at 2. The County intends "to prepare an integrated GMA/SEPA plan that encompasses both the rural and urban growth area review. It will need to coordinate this review with each of the four cities in Kitsap County and take the project through an extensive public process." *Id.*

Petitioner Harless opposes the requested extension. First, Harless asserts that the motion is untimely; it should have been brought as part of the County's motion for reconsideration of the Board's FDO. Harless Response, at 2. Further, Harless notes that the 2005 Legislature amended the GMA to remove penalties for counties and cities that failed to complete their UGA updates by December 1, 2004, if such review was completed by December 1, 2005. RCW 36/70A.130(10). Harless thus argues that Kitsap's request for an *additional* one-year extension is contrary to legislative intent. *Id.* Harless reasons that the compliance schedule established by the Board is already "double the statutory compliance period" and six-months beyond the extended deadline set by the Legislature. *Id*.

Finally, Harless states that a year is sufficient for the County to complete the work because (a) several necessary prerequisites to Kitsap's UGA update have already been completed and (b) County staff assigned to "isolated and uncoordinated subarea plans" could be put to work on the GMA-mandated UGA update instead. *Id*. at 3-4.

Commenting on the County's work plan, Harless asserts that the work plan is unfunded and the scope of work is inflated to include activities unrelated to compliance with the Board's orders. Harless Comments, at 6. Harless argues: "[T]he County has submitted another unfunded work plan, the scope of which greatly exceeds the Board's orders in the two cases at issue. In light of past non-performance, the County is highly unlikely to implement this proposed plan successfully." *Id.* at 2.[4]

Board Discussion

RCW 36.70A.300(3)(b) provides, in pertinent part:

> The board shall specify a reasonable time not in excess of one hundred eighty days *or such longer period as determined by the board in cases of unusual scope or complexity*, within which the … county … shall comply with the requirements of this chapter. The board *may require periodic reports* to the board on the progress the jurisdiction is making towards compliance.

Emphasis supplied.

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[3] The Kitsap Work Plans include, as Exhibit II, a detailed work plan for the UGA update and, as Exhibit III, a Request for Qualifications for a consultant to manage the project.

[4] Harless also points to the County's appeal of this Board's FDO, pending in Thurston County Superior Court, as indicative that "the County holds compliance with the GMA and this Board's orders in low regard." *Id.* at 3.

Because this Board recognized the need for complex process, involving SEPA review, consultation with cities, and public participation, the Board's FDO established a one-year compliance schedule, stating: "**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." FDO, at 39, emphasis in original.

In reviewing the work plan and other materials submitted by the County, the Board assumes the County has commenced a good faith effort toward updating its UGAs.[5] The Board **grants** the Motion to Extend, subject to additional requirements for progress reports, as allowed in RCW 36.70A.300(3)(b).

III. ORDER

Based upon the Board's review of the GMA, prior decisions of the Boards, the June 30, 2005, Final Decision and Order, the briefing, comments, arguments and materials submitted by the parties, presentations of the parties at the September 27, 2005, combined Compliance Hearing and Hearing on Motion to Extend, and having deliberated on the matter, the Board ORDERS:

- Kitsap County's motion seeking to extend the compliance schedule an additional six months to December 31, 2006, is **granted.**

- The Amended Compliance Schedule is set forth below:

    1. By no later than **December 31, 2006**, Kitsap County shall take appropriate legislative action to comply with the review and revision requirements of RCW 36.70A.130(3) for its urban growth area designations and permitted urban densities.

    2. Kitsap County shall file periodic reports with the Board indicating its progress on updating its UGAs. Such reports, at a minimum, should compare the actual status of the project with the elements and timeline of the adopted work plan. Compliance progress reports shall be filed every three months as follows: **December 23, 2005, March 31, 2006, June 30, 2006,** and **September 29, 2006.**

    3. Kitsap County shall simultaneously serve a copy of its compliance progress report on Petitioner Harless. Petitioner Harless may file a response to the compliance progress report within seven days.

[5] The Board notes that the County's draft work plan contains a number of caveats at footnote 1, page 1. The County would be advised to develop strategies to expedite its work as necessary to meet the revised deadline, despite contingencies.

4. By no later than **January 10, 2007**, Kitsap County shall file with the Board an original and four copies of the legislative enactment(s) adopted by Kitsap County to comply with RCW 36.70A.130(3) along with a statement of how the enactments comply with RCW 36.70A.130 (**compliance statement**). The County shall simultaneously serve a copy of the legislative enactment(s) and compliance statement on Petitioner Harless.

5. By no later than **January 22, 2007**, Petitioner Harless *may* file with the Board a Petitioner's Response to the County's compliance statement and the legislative enactments. Petitioner shall simultaneously serve a copy of such comment on the County.

6. Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. February 1, 2007** 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.]

So ORDERED this 14th day of October 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Margaret A. Pageler
Presiding Officer

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Edward G. McGuire, AICP
Board Member

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Bruce C. Laing, FAICP
Board Member