CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

WASHINGTON STATE DEPARTMENT OF ECOLOGY and WASHINGTON STATE DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT,	)	**Case No. 05-3-0034**
	)	***(DOE/CTED)***
Petitioners,	)	**PREHEARING ORDER and ORDER GRANTING SETTLEMENT EXTENSION**
v.	)	
CITY OF KENT,	)	
Respondent.	)	

I. BACKGROUND

On June 22, 2005,[1] the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Washington State Department of Ecology and Washington State Department of Community, Trade and Economic Development (**Petitioners** or **DOE/CTED**). The matter was assigned Case No. 05-3-0034, and is hereafter referred to as *DOE/CTED v. City of Kent*. Board member Margaret Pageler is the Presiding Officer for this matter.[2] Petitioners challenge the City of Kent (**Respondent** or **City**) adoption of Ordinance No. 3746 amending its critical areas ordinance. The basis for the challenge is noncompliance with the Growth Management Act (**GMA or Act**).

On June 24, 2005, the Board received a Notice of Appearance from Tom Brubaker, Kent City Attorney, on behalf of the City.

On June 27, 2005, the Board issued its Notice of Hearing setting a prehearing conference and establishing a tentative case schedule.

On June 29, 2005, the Board received a Motion to Intervene – Master Builders Association of King and Snohomish Counties and Building Industry Association of Washington **(MBA/BIAW)** – seeking to intervene on the side of the City. The Motion was accompanied by the Affidavit of Garrett Huffman in Support of Motion to Intervene.

[1] The PFR was received electronically on June 22, 2005, and in hard copy on June 23, 2005. Where pleadings and case materials have been submitted by e-mail or fax as well as in hard copy, this chronology indicates only the date first received.

[2] Board member Bruce Laing was designated the presiding officer at the outset, but the case was reassigned to Board member Margaret Pageler prior to the prehearing conference.

On July 6, 2005, the Board received "State Agencies' Response to Motion to Intervene filed by Master Builders Association of King and Snohomish Counties and Building Industry Association of Washington." The state agencies asked that the Board clarify that MBA and BIAW are intervening jointly.

On July 20, 2005, the Board received the Motion of Washington Association of Realtors (**WAR)** requesting Permission to Participate as an *Amicus Curiae.* The motion asked for permission to address the legal issues concerning affordable housing and economic development goals of the GMA [Legal Issue No. 6].

On July 22, 2005, the Board received Respondent's Index of Documents.

On July 25, 2005, the Presiding Officer sent to the parties a proposed restatement of the legal issues in the case.

On July 27, 2005, the Board received a Motion to Intervene – Livable Communities Coalition (**LCC)**.

On July 28, 2005, at 10:00 a.m., the Prehearing Conference was convened in the Board's offices, Suite 2094, 900 Fourth Avenue, in Seattle. Present for the Board were Board members Bruce Laing, Ed McGuire, and Margaret Pageler, presiding officer. Board externs Heather Bowman and Rachel Henrickson also attended. Petitioner DOE was represented by Thomas Young, and Petitioner CTED was represented by Alan Copsey, both Assistant Attorneys General of the State of Washington. Respondent City of Kent was represented by Tom Brubaker and Kim Adams-Pratt, Kent City Attorneys, accompanied by City staff Kim Marasek and Kelly Peterson. Intervenors MBA/BIAW were represented by Robert Johns of Johns Monroe Mitsunaga, and Amicus WAR was represented by Jay Derr and Annette Messitt of Buck & Gordon LLP. John Zilavy, representing Intervenor LLC, notified the Board and the parties that he would not be able to attend the prehearing conference because of a family matter.

The Board discussed with the parties the possibility of settling or mediating their dispute to eliminate or narrow the issues. The parties indicated that they are pursuing settlement; they requested an extension of the case schedule for ninety days. The Board asked for a written motion signed by both parties, attesting that the requested extension is for purposes of settlement discussions.

The Board then discussed the potential intervention by MBA/BIAW on the side of Respondent and by LCC on the side of the Petitioners. The Board also discussed the petition of WAR to participate as *amicus curiae*. There were no objections to any of the motions. The Board orally granted the motions, subject to conditions set forth *infra.*

The Board then reviewed its procedures for the hearing, including the composition of the Index to the record below; filing of core documents, exhibit lists and supplemental exhibits; dispositive motions; and the Legal Issues to be decided. The Board discussed with the parties the proposed restatement of the issues, which was accepted by Petitioners.

On August 2, 2005, the Board received two copies of the City of Kent's 2004 Comprehensive Plan, identified as a core document.

On August 2, 2005, the Board received Joint Motion to Extend Case Schedule, signed by Petitioners and Respondent, requesting a ninety-day extension for purposes of settlement discussions.

Based on the GMA, Board rules, the Notice of Hearing, discussions at the prehearing conference, and subsequent submittals by the parties, the Board enters the following Prehearing Order:

II. ORDER GRANTING INTERVENTION

The Board's Rules of Procedure at WAC 242-2-270 state:

> (1) Any person at any time may by motion request status as an intervenor in a case.
> (2) In determining whether a person qualifies as an intervenor, the presiding officer shall apply any applicable provisions of law and may consider the applicable civil court rules (CR) of this state. The granting of intervention must be in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.

The Civil Rules at CR 24(a) state:

> Upon timely application anyone shall be permitted to intervene in an action:…
> (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

MBA/BIAW seek to intervene in support of Respondent's position in this matter. MBA/BIAW propose to address all the legal issues listed in the PHO. The Board finds that the motion to intervene is timely and that MBA/BIAW have an interest in the matter as required by CR 24(a)(2). No objections to MBA/BIAW's intervention were received by the Board. The Board **grants the motion to intervene by MBA/BIAW, jointly,** on the side of Respondent.

Intervenor MBA/BIAW may file briefs in accordance with the briefing schedule set forth for Respondent in the Final Schedule. MBA/BIAW may brief any or all of the Legal Issues, but may not raise issues that were not stated in the PFR and set forth in this Prehearing Order. MBA/BIAW will not be allowed to participate in oral argument without having filed a brief. The Respondent's time for oral argument, as assigned by the Board, must be shared with Intervenor MBA/BIAW, as determined by the Respondent. Intervenor is entitled to notice of any settlement discussions that occur between DOE/CTED and City of Kent and may participate in such discussion, if any. However,

only DOE/CTED and City of Kent need to be signators to any settlement agreement disposing of all or a portion of this case.

Livable Communities Coalition seeks to intervene in support of Petitioners' position in this matter. LCC proposes to address all the legal issues listed in the PHO. The Board finds that the motion to intervene is timely and that LCC has an interest in the matter as required by CR 24(a)(2). No objections to LCC's intervention were received by the Board. The Board **grants the motion to intervene by LCC,** on the side of Petitioners.

Intervenor LCC may file briefs in accordance with the briefing schedule set forth for Petitioners in the Final Schedule. LCC may brief any or all of the Legal Issues, but may not raise issues that were not stated in the PFR and set forth in this Prehearing Order. LCC will not be allowed to participate in oral argument without having filed a brief. The Petitioners' time for oral argument, as assigned by the Board, must be shared with Intervenor LCC, as determined by the Petitioners. LCC is entitled to notice of any settlement discussions that occur between DOE/CTED and City of Kent, and may participate in such discussion, if any. However, only DOE/CTED and City of Kent need to be signators to any settlement agreement disposing of all or a portion of this case.

III. ORDER GRANTING *AMICUS*

WAC 242-02-280 provides as follows:

> (1) Any person whose interest may be substantially affected by a proceeding before a board may by motion request status as an *amicus* in the case.
> (2) A motion to file an *amicus curiae* brief must include a statement of:. . .
> (d) Applicant's reason for believing that additional argument is necessary on these specific issues. The brief of *amicus curiae* may be filed with the motion but must be filed no later than the time set for the filing of the brief for the party whose position the *amicus* supports.
> (3) If the person qualifies for *amicus*, the presiding officer may impose conditions upon the *amicus's* participation in the proceedings, either at the time that *amicus* status is granted or at any subsequent time.

Washington Association of Realtors (**WAR)** has requested leave to participate as *amicus curiae* in support of Respondent City of Kent. WAR proposes to file a brief concerning "why it is necessary for the City of Kent to consider adequate provision for housing supply and economic development to meet GMA urban growth obligations." WAR indicates that it has substantial interest and can provide significant input on the impacts of critical areas regulations on housing supply and costs and on economic development. Having received no objections to the motion from any party, the Board hereby **grants WAR's motion for *amicus* status**, **limited to Legal Issue No. 6.**

Amicus WAR may file a brief in accordance with the briefing schedule set forth for Respondent City of Kent in the PHO [**January 17, 2006**]. *Amicus* may brief Legal Issue

No. 6 as stated in the PHO and will address **only** Petitioners' arguments concerning housing supply and affordability and economic development. *Amicus* WAR will not participate in oral argument or in settlement discussions.

IV. ORDER GRANTING SETTLEMENT EXTENSION

RCW 36.70A.300(2) provides, in relevant part:

> (a) Except as provided in (b) of this subsection, the final order shall be issued within one hundred eighty days of receipt of the petition for review, or, if multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated.
>
> (b) The board may extend the period of time for issuing a decision to enable the parties to settle the dispute if additional time is necessary to achieve settlement, and (i) an extension is requested by all parties, or (ii) an extension is requested by the petitioner and respondent and the board determines that a negotiated settlement between the remaining parties could resolve significant issues in dispute. The request must be filed with the board not later than seven days before the hearing on the merits of the petition. The board may authorize one or more extensions for up to ninety days each, subject to the requirements of this section.

The Board finds:

1. Petitioners DOE/CTED and Respondent City of Kent have requested a settlement extension of ninety days to allow discussions to resolve this matter.
2. The Joint Motion to Extend Case Schedule for settlement discussions was received on August 2, 2005.
3. The previous deadline for issuance of the Final Decision and Order was December 19, 2005.

Therefore, the Board concludes:

1. Pursuant to RCW 36.70A.300(b), the Board may grant one or more settlement extensions for up to ninety days each.
2. Both the Petitioners and Respondent in Case No. 05-3-0034 have requested a settlement extension of ninety (90) days.
3. The request for settlement extension is timely.
4. The Board will extend the FDO date by 90 days to **March 20, 2006**. The Board establishes a final schedule for motions and briefing in Case No. 05-3-0034 based on this extension.

Based upon review of the Joint Motion to Extend Case Schedule, the relevant law, and the findings and conclusions noted above, the Board enters the following Order:

The Joint Motion to Extend Case Schedule for ninety days is **granted**. A final case schedule is established based on this extension. The deadline for the final Decision and Order in Case No. 05-3-0034 is hereby changed to **March 20, 2006.**

V. FINAL SCHEDULE

Notice is hereby given in the table below of the final schedule for this case.

FINAL SCHEDULE
CPSGMHB Case No. 05-3-0034
DOE/CTED v. City of Kent

All documents must be filed with the Board (one original plus four copies on three-hole punched paper and copied back-to-back) by 4:00 p.m. and a copy served upon the other party on the designated day, unless otherwise noted.

DATE	EVENT
June 22, 2005	Petition for Review filed (05-3-0034)
June 27, 2005	Board Notice of Hearing
July 5, 2005	Deadline for seeking Direct Review by Superior Court[3]
July 22 , 2005	Respondent's Index filed
July 28, 2005	**Prehearing Conference**
August 3, 2005	**Board Prehearing Order and Order Granting Settlement Extension**
November 9, 2005	Deadline for Motions[4] and Memoranda in Support (**with exhibits**)
November 23, 2005	Deadline for Response to Motions (**with exhibits**)
November 30, 2005	Deadline for Rebuttal to Response to Motions (optional)
December 14, 2005	**Board Order on Motions due**
January 3, 2006	Deadline for Petitioner's Prehearing Brief (**with exhibits**)
January 17, 2006	Deadline for Respondent's Prehearing Brief (**with exhibits**)
January 23, 2006	Deadline for Requesting Settlement Extension[5]
January 24, 2006	Deadline for Petitioner's Reply Brief (optional)
January 30, 2006	**Hearing on Merits of Petition: 10:00 a.m.-12:30 p.m., Board's offices**
March 20, 2006	**Final Decision and Order due**

VI. MOTIONS TO SUPPLEMENT THE RECORD

RCW 36.70A.290(4) requires that the Board base its decision on the record developed below. Generally, additional evidence will not be considered by the Board, unless it determines that it will be necessary or of substantial assistance in reaching a decision.

[3] See: RCW 36.70A.295.

[4] The Board's schedule for motions includes Dispositive Motions (usually filed by Respondents) and Motions to Supplement the Record (usually filed by Petitioners).

[5] See: RCW 36.70A.300(2).

Consequently, the Board will entertain Motions to Supplement the Record, with supporting briefs.

In the case of exhibits found by either party to have been omitted from the Record by inadvertence, and where the Respondent agrees that they should have been listed, the Board will treat them as being part of the record below rather than as supplemental exhibits, and the Respondent will amend its Index to include such documents.

Otherwise, if a party wishes to supplement the record below through documentary evidence, it shall file a Motion to Supplement the Record by the date for motions and in the manner stated in the Final Schedule. **Copies of the exhibits proposed for supplementing the record must accompany the Motion to Supplement.**

The Board can take official notice of federal and state law, reported judicial decisions, and county and city ordinances and resolutions. WAC 242-02-660. The parties do not need to list state statutes or regulations as supplemental exhibits, as the Board has access to them. In contrast, City ordinances and regulations shall be submitted as exhibits, as the Board may not have copies of such documents.

Unless otherwise directed by the Presiding Officer, the Board will make its determination on proposed supplementation based solely upon the written motions, any responses and rebuttal documents, and a review of the Index. The Board will strive to issue its Order on Motions by the date stated above in the Final Schedule.

VII. DISPOSITIVE MOTIONS

Only dispositive motions of a summary nature and directly relating to the Legal Issues set forth below have the potential for being resolved by the Board prior to hearing on the merits. The moving party shall specify the legal issue(s) being addressed in the dispositive motion, and each issue addressed must be argued in the brief. The Board generally considers motions addressing subject matter jurisdiction, timeliness and standing. Generally, if any material facts are in dispute, the Board will not decide a dispositive motion until its Final Decision and Order. Furthermore, even if facts are undisputed, the Board may defer its decision until the case is heard in full.

The moving party shall file any dispositive motion and supporting brief by the date and in the manner stated in the Final Schedule above**.** Copies of exhibits referenced in the brief shall be attached. No dispositive motions were anticipated in this matter; nonetheless, the Board has provided a schedule in the event dispositive motions are brought.

The Board does not usually schedule a hearing on motions. No hearing on motions was scheduled in this case. Therefore, the Board will consider and base its decision exclusively on the parties' briefs. The Board will strive to issue its Order on Motions by the date stated above in the Final Schedule**.**

VIII. PRESUMPTION OF VALIDITY, BURDEN OF PROOF, STANDARD OF REVIEW AND DEFERENCE TO LOCAL JURISDICTIONS

Comprehensive plans and development regulations, and amendments thereto, adopted by the City of Kent pursuant to the Act, are **presumed valid** upon adoption. RCW 36.70A.320(1).

The **burden is on the petitioners,** Washington State Department of Ecology and Washington State Department of Community, Trade and Economic Development, to demonstrate that any inaction or action taken by the City is not in compliance with the Act. RCW 36.70A.320(2).

The Board shall find the City in compliance with the Act, unless it determines that the jurisdiction's action was **clearly erroneous** in view of the entire record before the Board and in light of the goals and requirements of the Act. RCW 36.70A.320(3). For the Board to find the City action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Pursuant to RCW 36.70A.3201 the Board will grant deference to the City of Kent in how it plans for growth, consistent with the goals and requirements of the GMA. The State Supreme Court's most recent delineation of this required deference states: "We hold that deference to county planning actions that are consistent with the goals and requirements of the GMA … cedes only when it is shown that a county's planning action is in fact a 'clearly erroneous' application of the GMA." *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, 154 Wn.2d 224, 248, 110 P.3d 1132 (2005). The *Quadrant* decision affirms prior State Supreme Court rulings that "[L]ocal discretion is bounded, however, by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearings Board*, 142 Wn.2d 543, 561, 14 P.3d 133 (2000). Division II of the Court of Appeals further clarified, "Consistent with *King County*, and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a county's plan that is not 'consistent with the requirements and goals of the GMA.'" *Cooper Point Association v. Thurston County*, 108 Wn.App. 429, 444, 31 P.3d 28 (2001); *affirmed Thurston County v. Western Washington Growth Management Hearings Board*, 148 Wn.2d 1, 15, 57 P.3d1156 (2002) and cited with approval in *Quadrant*, *supra*, at fn. 7.

In affirming the *Cooper Point* court, the Supreme Court stated:

> Although we review questions of law de novo, we give substantial weight to the Board's interpretation of the statute it administers. *See Redmond*, 136 Wn.2d at 46. Indeed "(I)t is well settled that deference [to the Board] is appropriate where an administrative agency's construction of the statutes is within the agency's field of expertise."

Thurston County v. Western Washington Growth Management Hearings Board, 148 Wn. 2d 1, 14, 57 P.3d 1156 (2002).

IX. SETTLEMENT EXTENSIONS

Pursuant to RCW 36.70A.300, the Board must issue a Final Decision and Order (**FDO**) within one hundred and eighty days of receipt of a petition for review. However, the Board may extend the time period for issuing an FDO in order to allow the parties adequate time to achieve settlement. Extensions of up to ninety days are authorized. The Board has granted one such extension (Section IV, above) and the Board's **FDO is due on March 20, 2006.** The parties may request an additional extension, but such request must be filed with the Board no later than seven days before the scheduled hearing on the merits.[6] **In this case the settlement extension deadline is January 23, 2006.**

X. FILING OF EXHIBITS

Other than Core Documents, only exhibits proposed for supplementing the record or referenced in a motion, brief, response, or reply need to be filed with the Board.

Exhibits should be clearly identified using the numbering in the City Index or be identified by supplemental exhibit number assigned in the Order on Motions. Exhibits must be **clearly tabbed *and* accompanied by a table of attached exhibits** naming and describing each exhibit document. When filing response or reply briefs, the parties need only refer to exhibits previously submitted, including those appended to motions briefs, rather than submitting duplicates.

Only in extraordinary circumstances will the Board entertain Motions to Supplement the Record after the deadline for motions set forth in the Final Schedule above. The admission of exhibits that have been objected to, or that have not been stipulated to, and/or supplemental exhibits that the presiding officer has indicated may be offered at the time of the hearing (but the admissibility has not yet been determined) will be ruled on by the presiding officer at the Hearing on the Merits.

XI. BRIEFING SCHEDULE

The parties shall specify which Legal Issues, as set forth below, are being addressed in each prehearing, response, and reply brief. The parties shall file their briefs by the date and in the manner stated in the Final Schedule above. The parties are reminded that their briefs and arguments must be confined to the Legal Issues set forth below. Numerous arguments may be contained under a single Legal Issue. **Also, Legal Issues, or portions of Legal Issues, not briefed in the Prehearing Brief will be deemed to have been abandoned and cannot be resurrected in Reply Briefs or in oral argument at the Hearing on the Merits.**

XII. STATEMENT OF LEGAL ISSUES

RCW 36.70A.290(1) provides in relevant part: "The Board shall not issue advisory opinions on issues not presented to the board in the statement of the issue, as modified by

[6] *See*: WAC 242-02-560 for settlement extension procedures.

any prehearing order." Prior to the prehearing conference, the presiding officer circulated to the parties a proposed restatement of issues consolidating the twelve legal issues set forth in the PFR. The parties agreed to the restatement. Consequently, the Legal Issues,[7] as stated below, will be the issues the Board addresses in Case No. 05-3-0034.

In adopting Ordinance No. 3746, did the City of Kent violate the Growth Management Act, specifically as follows:

> *<u>Legal Issue No. 1</u>. Whether the City, in adopting the wetlands rating system in Section 11.06.580 of the Ordinance, a) failed to accurately designate wetlands as required in RCW 36.70A.040(3)(b) and 36.70A.170(1)(d); b) failed to consider the guidelines established pursuant to RCW 36.70A.050, as required in RCW 36.70A.170(2); and c) failed to include best available science as required in RCW 36.70A.172(1)?*
>
> *<u>Legal Issue No. 2</u>. Whether the City, in adopting the wetland buffers, setback lines and other provisions of Section 11.06.600, together with the wetlands rating system of Section 11.06.580, a) failed to protect wetlands as required in RCW 36.70A.040(3)(b), RCW 36.70A.060(2) and RCW 36.70A.172(1); b) failed to include best available science as required in RCW 36.70A.172(1); and c) failed to be guided by the GMA goals in RCW 36.70A.020(9) and (10)?*
>
> *<u>Legal Issue No. 3(a)</u>. Whether the City failed to comply with the terms and requirements of RCW 36.70A.030(21), RCW 36.70A.040(3)(b), RCW 36.70A.060(2), RCW 36.70A.170 and/or RCW 36.70A.175 by adopting the definition of "wetland" or "wetlands" in Section 11.06.530 and by adopting the exemption in Section 11.06.040.A.12, each of which effectively redefines the GMA's definition of wetlands that must be protected?*
>
> *<u>Legal Issue No. 3(b)</u> Whether, read together, the definition of "wetland" or "wetlands" in Section 11.06.530 and the exemption in Section 11.06.040.A.12 constitute a failure to protect wetlands contrary to RCW 36.70A.172(1) and show that the City of Kent failed to be guided by the GMA goals in RCW 36.70A.020(9) and (10)?*
>
> *<u>Legal Issue No. 4</u>. Whether the City of Kent's findings and conclusions that it included best available science in developing the Ordinance – [set forth in "Recitals" paragraphs A, F through L, M through V, and KK] – are unsupported by and contrary to the evidence in the record, so that the wetlands protection sections of the Ordinance that rest on those findings and conclusions – [Sections 11.06.020.B.1, 11.06.580, and 11.06.600] –*

[7] The Board recognizes that some of the Legal Issues prepared by Petitioners, and set forth in this PHO, include argument and assertions of facts that are not in evidence before the Board. These arguments and factual assertions may or may not be borne out when exhibits and briefs are filed.

do not comply with the requirements in RCW 36.70A.172(1) and are not guided by the GMA goals in RCW 36.70A.020(9) and (10)?

Legal Issue No. 5. Whether the City of Kent's findings and conclusions that planned and existing projects and regulations apart from the Ordinance were intended to protect the functions and values of wetlands and in fact protect the functions and values of wetlands – [set forth in "Recitals" paragraphs F through L, T through V, DD, and KK] – are unsupported by and contrary to the evidence in the record, so that the wetlands protection sections of the Ordinance that rest on these findings and conclusions – [Sections 11.06.020.B.1, 11.06.580, and 11.06.600] – do not comply with the requirements in RCW 36.70A.040(3)(b), RCW 36.70A.060(2), RCW 36.70A.170, and RCW 36.70A.172(1) and are not guided by the GMA goals in RCW 36.70A.020(9) and (10)?

Legal Issue No. 6. Whether the City of Kent's findings and conclusions that reduced wetlands protection is justified by the need to balance such protection against other goals of the GMA – [set forth in "Recitals" paragraphs CC through JJ, and LL through NN] – are unsupported by and contrary to the evidence in the record, so that any downward departure from the best available science in the wetland protection provisions of the Ordinance – [Sections 11.06.020.B.1, 11.06.580, and 11.06.600] – is not in compliance with the requirements in RCW 36.70A.040(3)(b), RCW 36.70A.060(2), RCW 36.70A.170, and RCW 36.70A.172(1) and is not guided by the GMA goals in RCW 36.70A.020(9) and (10)?

XIII. HEARING ON THE MERITS

The Board has scheduled the hearing on the merits (**HOM**) for this matter at **10:00 a.m., January 30, 2006,** at the Board's offices, 900 Fourth Avenue, Suite 2470, Seattle Washington. The HOM is a quasi judicial proceeding open to the public. Only counsel for the parties will speak. Petitioners and Respondent will be allocated equal time. Petitioners may divide the allocated time between opening argument and rebuttal, but no more than half of Petitioners' time may be designated for rebuttal. Petitioners will allocate some portion of their time to Intervenor LLC, and Respondent will allocate some portion of its time to Intervenor MBA/BIAW. The parties will highlight their main arguments for the Board rather than repeat every argument presented in the briefs. The HOM affords the Board an opportunity to direct clarifying questions to the parties.

So ORDERED this 3d day of August 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____

Margaret A. Pageler
Presiding Officer

FINAL SCHEDULE
CPSGMHB Case No. 05-3-0034
DOE/CTED v. City of Kent

All documents must be filed with the Board (one original plus four copies on three-hole punched paper and copied back-to-back) by 4:00 p.m. and a copy served upon the other party on the designated day, unless otherwise noted.

DATE	EVENT
June 22, 2005	Petition for Review filed (05-3-0034)
June 27, 2005	Board Notice of Hearing
July 5, 2005	Deadline for seeking Direct Review by Superior Court[8]
July 22 , 2005	Respondent's Index filed
July 28, 2005	**Prehearing Conference**
August 3, 2005	**Board Prehearing Order and Order Granting Settlement Extension**
November 9, 2005	Deadline for Motions[9] and Memoranda in Support (**with exhibits**)
November 23, 2005	Deadline for Response to Motions (**with exhibits**)
November 30, 2005	Deadline for Rebuttal to Response to Motions (optional)
December 14, 2005	**Board Order on Motions due**
January 3, 2006	Deadline for Petitioner's Prehearing Brief (**with exhibits**)
January 17, 2006	Deadline for Respondent's Prehearing Brief (**with exhibits**)
January 23, 2006	Deadline for Requesting Settlement Extension[10]
January 24, 2006	Deadline for Petitioner's Reply Brief (optional)
January 30, 2006	**Hearing on Merits of Petition: 10:00 a.m.-12:30 p.m., Board's offices**
March 20, 2006	**Final Decision and Order due**

[8] See: RCW 36.70A.295.

[9] The Board's schedule for motions includes Dispositive Motions (usually filed by Respondents) and Motions to Supplement the Record (usually filed by Petitioners).

[10] See: RCW 36.70A.300(2).