

**CENTRAL PUGET SOUND  
GROWTH PLANNING HEARINGS BOARD  
STATE OF WASHINGTON**

CITY OF POULSBO,)CASE NO. 92-3-0009

)

Petitioner,)ORDER GRANTING KITSAP

)COUNTY'S PETITION FOR

CITY OF PORT ORCHARD,)RECONSIDERATION AND

)MODIFYING FINAL DECISION

Petitioner,)AND ORDER

)

CITY OF BREMERTON,)

)

Petitioner,)

)

v.)

)

KITSAP COUNTY, )

)

Respondent.)

)

**A.PROCEDURAL BACKGROUND**

The Central Puget Sound Growth Planning Hearings Board (the **Board**) issued a Final Decision and Order in the above referenced case on April 6, 1993. The Final Decision and Order noted that it constituted a final order as specified by RCW 36.70A.300 unless a party filed a Petition for Reconsideration pursuant to WAC 242-020-830.

On April 16, 1993, the Board received from Kitsap County (the **County**) a Petition for Reconsideration (the **Petition**). On April 19, 1993, the Board, pursuant to WAC 242-020-830(2), ordered the cities of Bremerton, Port Orchard and Poulsbo to supply Answers to the County's Petition. On April 22, 1993 the Board received an Answer to Kitsap County's Petition for Reconsideration from the City of Poulsbo; on April 27, 1993 it received a Reply of City of Port Orchard to Petition for Reconsideration; and on April 29, 1993 it received an Answer of City of Bremerton to Petition for Reconsideration.

**B.DISCUSSION**

The County listed six points as its basis for filing the Petition. In filing their Answers to the Petition, Port Orchard and Poulsbo responded in the same format as the Petition. Bremerton's Answer addressed many of the points listed but was not formatted in a similar numerical fashion. For consistency purposes, this order lists and discusses each of the County's points in the order they were raised, including the corresponding responses by Poulsbo and Port Orchard.

Bremerton's responses have been grouped under the points that most clearly relate.

### Basis for Reconsideration No. 1

*The Board's construction of County-wide Planning Policies is not in accordance with RCW 36.70A.210 (1).*

#### a. Kitsap's Position

In its Petition, Kitsap argues:

The Board ascribes to the County-wide Planning Policies (CPP's) a

long term purpose ... to facilitate the transformation of local governance in urban areas so that urban governmental services are provided by cities and rural and regional services are provided by counties.<sup>[1]</sup>

This holding is at odds with the specific statutory purpose of the CPP's in RCW 36.70A.210(1): ... a county-wide planning policy is a written policy or statements used **solely** for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. (Emphasis supplied.)

The Board's holding transforms the CPP's into something the Legislature did not intend: a kind of super-comprehensive plan with the express purpose of changing the pattern of governance in each County planning under the Act. The holding is not based on the language of the Act, and is clearly erroneous.... (Petition, at 2).

#### b. Poulsbo's Position

In its Answer, Poulsbo argues:

...

The County selectively quotes the Board's decision and perhaps therefore misinterprets the overall thrust of the Board's opinion. The Board's opinion did not hold that cities are the sole providers of urban services but rather held that cities are the primary providers of urban services in the county. While the quote on page 22, lines 22 through 24 is accurate, a fair reading of the entire Board's opinion indicates that cities are not the sole providers of urban services. (For instance, see Conclusion No. 1 on Page 23, lines 19 through 21.) (Poulsbo's Answer, pp. 1 - 2).

#### c. Port Orchard's Position

In its Reply, Port Orchard argues:

...

... the Board, in "discussion" commented that CPPs have both an "immediate purpose and a long-term purpose". Decision, p.22. There is nothing inconsistent between that statement and the goals of the Act. The sentence which immediately precedes that cited by Respondent in RCW 36.70A.210(1) says:

The Legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban services within urban growth areas.

The Board's statement simply reflects a legislative statement regarding CPPs. In any case, the language appears in the "discussion" section of the Decision, and is merely a

restatement of one of the many goals of the Act. Respondent's assertion that this sentence somehow "transforms" CPPs into "a kind of super-comprehensive plan" borders on the ridiculous. A CPP is exactly what the statute says it is, nothing more and nothing less. (Port Orchard's Reply, pp. 1 and 2).

#### Discussion of Basis for Reconsideration No. 1

The County accurately quoted the Board's Final Decision and Order at page 22, lines 22 through 24. The Board agrees with the County that this sentence, read alone, is at odds with the Growth Management Act (the **GMA** or **the Act**). This particular sentence in the Board's discussion failed to include a crucial word from the first sentence in RCW 36.70A.210(1), that "...cities are **primary** providers of urban governmental services within urban growth areas." (emphasis added). Accordingly, the Board will modify its Final Decision and Order to insert the word "**primary**" into the above-quoted sentence. However, one should note that the Board's Conclusion No. 1 on the same issue correctly stated that:

A long term purpose of the CPPs is to facilitate the transformation of local governance in urban growth areas so that cities become the **primary** providers of urban governmental services and counties become the providers of regional and rural services and the makers of regional policies. (Final Decision and Order, page 23, lines 19 through 21; emphasis added).

That conclusion remains unchanged.

Kitsap also disputes the Board's holding that a long term purpose of CPPs is the transformation of local governance within the urban growth area. The County's Petition emphasizes the word 'solely' to make the argument that the Board's holding goes beyond the authority and intent of RCW 36.70A.210.

The use of the term "solely" does not diminish the importance of the CPPs, nor their substantive effect. Rather, that word serves to differentiate the CPPs from comprehensive plans or from development regulations or other exercises of the land use power. CPPs are 'solely' to establish a county-wide framework for comprehensive plans. As the Board held in *Snoqualmie v. King County* (CPSGPHB Case No. 92-3-0004), that framework is a substantive skeleton rather than a formless amoeba. Accordingly, the Board rejected the City's position in that case that CPPs were purely procedural and without substantive effect.

Kitsap characterizes the Board's holding as transforming the CPPs "into something the legislature did not intend." Quite to the contrary, the opening language of RCW 36.70A.210(1) (which Kitsap omits in its Petition) explicitly states what the legislature intended with regard to the respective roles of cities and counties in providing services:

The legislature recognizes that counties are regional governments within their boundaries, and that cities are primary providers of urban governmental services within urban growth areas. (emphasis added).<sup>[2]</sup>

In addition, RCW 36.70A.110(1) provides that:

Each county that is required or chooses to adopt a comprehensive land use plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall

be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth or is adjacent to territory already characterized by urban growth.<sup>[3]</sup>

Furthermore, RCW 36.70A.110(3) indicates that:

Urban growth should be located first in areas already characterized by urban growth that have existing public facility and service capacities to serve such development, and second in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided either by public or private sources. Further, it is appropriate that urban government services be provided by cities, and urban government services should not be provided in rural areas. (emphasis added).

The GMA requires the comprehensive plans of cities and counties to recognize that land use and service delivery are inter-twined. This fact, when combined with the Act's direction that cities are to be the primary providers of urban governmental services within urban growth areas, leads to the inescapable conclusion that the form of local governance is a key component of growth management. A major precept of the Act is that change is required in the way that plans are related to land use and service delivery issues, in the way that plans are related to one another, and indeed, in the very role that cities and counties play. The most succinct and accurate word to describe the change that the Act directs is "transformation".

Note that "transformation", while not used in the Act nor defined by the Board to date, is defined by *Webster's New World Dictionary* 1547 (College ed. 1968) as meaning: a transforming or being transformed.

In turn, "transform" means:

To change the form or outward appearance of. [*Webster's*, 1546].

The two operative words in this latter definition are "change" and "form". Thus "transformation" is an apt description of the change in the form of urban service delivery in urban growth areas such that cities become the primary providers (and counties and others, such as special districts, the secondary providers) of urban governmental services.

Note that such a transformation does not depend upon nor presume a change in the statutory authority or structure of special districts, city or county government. Rather, it presumes that the geographic size of cities and/or their service delivery areas will increase to serve the designated urban growth areas, and that the counties will play an increasingly regional role, consistent with the direction of RCW 36.70A.210(1).

Kitsap contends that the Board's Decision transforms CPPs into a "super comprehensive plan". Comprehensive plans are defined at RCW 36.70A.030(4). CPPs are not comprehensive plans, nor "super-comprehensive plans", nor does the Board's Decision make them such. Instead, CPPs are policy documents that do have substantive and directive effect on, and therefore provide an important 'framework' for, comprehensive plans.

## Basis for Reconsideration No. 2

*The Board wrongly interpreted the Kitsap County CPP's use of the word "should" to mean "shall".*

### a. Kitsap's Position

In its Petition, Kitsap argues:

...

The Decision wrongly concludes that the use of the word "should" in the CPP's is the equivalent of the word "shall". The clear intent of Kitsap County was to make a distinction in the wording, and accord the word "should" its ordinary meaning: allowing action, not requiring action. After wrongly interpreting the CPP's to be long-range documents, the Board compounds its error by changing the intent of the wording of the policies from discretionary to mandatory. (Petition, pp. 2 - 3).

### b. Poulsbo's Position

In its Answer, Poulsbo argues:

With regard to the differences between "should" and "shall", the County is being disingenuous at best. The City, in its hearing brief, spent considerable time and effort establishing the sequence of events leading up to the inclusion of the challenged language in the CPP. ... It is patently clear to anyone that the County was motivated by a desire to impose the election method on cities despite the clear requirements of state law and over the clear objections of the cities.

...

Moreover, if, as the County suggests, the word "should" should be given the meaning of "allowing action", then perhaps the word "may" would be more appropriate. However, it is clear that the County was not satisfied with a permissive word and instead inserted the directory word. As such it must be stricken as ordered by the Board. (Poulsbo's Answer, p.2).

### c. Port Orchard's Position

In its Reply, Port Orchard argues:

...

... The Board correctly found that in a document such as a CPP the word "should" does not reduce that document to a merely advisory status. A CPP is not an advisory document. It is a "written policy statement" to be used to establish a "county-wide framework from which county and city comprehensive plans are developed and adopted..." It is a "framework" within which cities and counties must create and enforce their comprehensive plans. RCW 36.70A.210(1).

The word "should" can express an obligation. State v. LaPorte, 58 Wn.2d, 823 (1961). The Board recognizes this and properly found that in a CPP the word does, in fact, provide direction. A city considering a CPP and its effect upon a comprehensive plan would certainly ignore such a direction at its peril. (emphasis supplied) (Port Orchard's Reply, p. 2)

#### d. Bremerton's Position

In its Answer, Bremerton argues:

... The argument that these terms ["should" rather than "shall"] are not both directive in differing degrees is specious. The effect is the same - to direct one course of action by the citizens and elected officials (or appointed Boundary Review Board members) who are required to follow the CPPs. The County's position that "should" means freedom to act, to exercise discretion, better fits the verb "may" (Bremerton's Answer, p. 2).

#### Discussion of Basis for Reconsideration No. 2

The Board did not equate "should" with "shall". This is a misstatement by Kitsap County. Instead, as the Board concluded in *Snoqualmie v. King County*, policy documents under the GMA have substantive effect. Therefore, any policy statement must be presumed to have some directive effect. We further stated that "should" can impart a lower order of direction than "shall", but that in using that term the adopting legislative body had an obligation to explicitly state such nuance of meaning or intent. Kitsap is free to use both "shall" and "should" and to use the latter to provide advisory guidelines, if it so indicates its intention. Another way to differentiate between policy statements that are intended to be permissive or advisory, as opposed to directive, would be to use the word "may", and to clearly indicate that a policy using this auxiliary verb is purely discretionary.

However, absolutely nothing in the Board's review of the record indicates that Kitsap's "clear intent" was to grant the use of the word "should" a discretionary meaning. [see the Board's Findings of Fact 18, 20, 21, 27, 28, 29, 30, 31, 33, 36, 39, 41, 43, 46 and 54]. For the County to give its policies purely advisory status it must explicitly label them as such. Otherwise, the cities are correct in assuming that everything within the CPPs must have weight and meaning, and to ignore a CPP simply because it says "should" is done at a city's peril. Regardless of which "discretionary" auxiliary verbs might be used, the County is cautioned that when it selects such terms, it must still comply with RCW 36.70A.210(3), which specifies the minimum substantive requirements for CPPs.

#### Basis for Reconsideration No. 3

***The land use powers of the Cities are not altered by the CPP's.***

#### a. Kitsap's Position

In its Petition, Kitsap argues:

...  
Since the language used in the CPP's is discretionary, and not mandatory, the land use powers of the Cities are not affected by the CPP's. No violation of the Act's prohibition on altering the "land use powers" of the Cities was intended, nor should the Board imply one. (Petition, p. 3).

#### b. Poulsbo's Position

In its Answer, Poulsbo states that it has presented its argument in answer to Basis for Reconsideration No. 2.

#### c. Port Orchard's Position

In its Reply, Port Orchard argues:

...  
... The county may or may not have "intended" to alter the land use powers of cities by the stricken passages. However, the effect of that language clearly has been to cause the cities to believe that their rights in this area were being impinged upon. If the county feels the use of "should" is not mandatory and that no direction is being given the cities here, then why not simply agree to excise the language itself. If it is of no effect, it should not be in the CPP in the first place. (Port Orchard's Reply, p. 3).

### Discussion of Basis for Reconsideration No. 3

Although the County now claims on reconsideration that it did not intend to alter the land use powers of cities, it clearly has done so. The Board need not "imply" that such a violation of the GMA has occurred; it is obvious on its face.

Principle of Policy D(2)(d) of the CPPs provides:

Annexation by Election. When annexation is proposed, citizens in the area affected should be given the opportunity to vote whether or not to annex. {Exhibit 13, p. 3}.

In conjunction with this principle, a portion of Element A(3)(k) of the CPPs provides that when an annexation has been initiated by the petition method and non-petition property is included in the annexation proposal, "... a city **shall** first **conduct** a public hearing with public notice to all owners of property within the annexation area..." {Exhibit 13, p. A-5; emphasis added}. Even the County must admit that this is mandatory language.

Nothing in Chapter 35.13 RCW or Chapter 35A.14 RCW, which prescribe the alternate methods of annexation, requires that a public hearing first be conducted, with public notice to all owners of property within the annexation area, when the petition method has been utilized. The Board, after reviewing the record below and entering numerous Findings of Fact on the annexation issue, finds it difficult to believe that Kitsap County did not intend precisely this requirement. Although the County's result of requiring a public hearing may have merit, it does alter the existing land use authority of cities since it adds a requirement to existing statutes. The County does not have the authority to ignore or amend state law; therefore, the Board's decision on this issue stands.

### Basis for Reconsideration No. 4

*The Decision wrongly curtails the public's ability to choose a form of government.*

#### a. Kitsap's Position

In its Petition, Kitsap argues:

... The Board has erroneously interpreted the Act to **require** all urban services to be provided by cities, rather than give effect to the plain language of the Act which states only that the cities are to be primary deliverers of urban services, not the sole providers.

...  
... Under the Board's re-writing of the Act, special purpose districts and county run utilities will be **required** to be sold to neighboring cities, while citizens within existing urbanized areas will be forced to annex to cities to obtain those urban services now provided by the

county or special district. Abolition of special districts and county-run utilities is not required under the Act, and without specific authorization from the Legislature, the Board cannot require it.

...

... The Act requires coordinated planning between different agencies under the new Comprehensive Plans, and the drawing of the Urban Growth Boundaries to contain urban sprawl. It did **not** eliminate the County's authority to provide services, nor terminate the powers of special districts.

There is no policy the County could enact which would force persons to annex to cities or form new cities against their will, no law the County could adopt to dissolve existing special purpose districts, and no requirement under the Act to achieve the results the Board requires....

...

The Decision will in fact cause the very fragmentation of services it claims will occur if ordinary citizens choose their service provider. For instance, the Municipality of Metropolitan Seattle (METRO) provides sewer and transit services to most of King County, and will soon merge with King County. Under the Board's reasoning, METRO services must be divided between Seattle, Kirkland, Bellevue, Renton and all the other cities currently receiving METRO services.... It was the very fragmentation of sewer service that resulted in the degradation of Lake Washington which lead [sic] to METRO's formation; a regional solution to a regional problem. (Petition, pp. 3 - 6; bold emphasis in original; underlined emphasis added).

#### b. Poulsbo's Position

In its Answer, Poulsbo argues:

The County's overly dramatic characterization of the Board's decision and its apocalyptic vision of the demise of local service providers has no basis in the record. The Board's decision has simply stated that in accordance with growth management, cities should be the primary providers of urban services and that the countywide planning policies and the comprehensive plans which follow, as well as the implementing ordinances which follow the comprehensive plans, should all be designed to accomplish this goal. There is nothing to suggest that the majority of people are going to be forced into a city against their will, especially given the petition requirements of current law. It is simply not possible for a city to force any sizable portion of the community into its borders, even if it wanted to.

(Answer, pp. 2 - 3).

#### c. Port Orchard's Position

In its Reply, Port Orchard argues:

...

... The Board's decision does not curtail any citizens' rights. It simply points out, correctly, that there is more than one method of annexation, and that one of the methods does not involve a popular vote. The offensive language in the CPP clearly implies that citizens

either have or should have the right to vote on all annexations. That implication is untrue and misleading, and when included in a CPP creates a conflict with existing state law. (see discussion and citations at pp. 17-19 of City of Poulsbo's Brief.) (Port Orchard's Reply, p. 3).

After responding to Kitsap's five points of basis for reconsideration, Port Orchard made a general conclusion that presumably addresses both the question of annexation and urban service delivery:

The Board correctly found that certain portions of Kitsap County's CPP are not in compliance with the clear language and goals of the Growth Management Act. The county cannot create its own GMA; it must adhere to that adopted by the Legislature. The authority the county either wants, or implies it has, simply does not exist within the confines of this legislation. (Port Orchard's Reply, p.3).

#### d. Bremerton's Position

In its Answer, Bremerton responds to Kitsap's attack on the Board's rationale that a long term purpose of CPPs is the transformation of governance. Bremerton argues that the Board's decision is supported by the definition of "urban governmental services", the language of RCW 36.70A.210(1) which identifies cities as the primary providers of urban governmental services, and RCW 36.70A.110 which states that "it is appropriate that urban governmental service should be provided by cities, and urban governmental service should not be provided in rural areas".

Bremerton argues:

To accept the County's position that the GMA is oblivious to governance and is only concerned with locating growth, makes all of the above policy statements superfluous language in the Act. The Board's holding that the legislature intended that a long term purpose of the GMA, and specifically the CPPs, was to direct transformation of governance in urban growth areas is a coherent explanation of these references.

The legislative intent as to who shall govern where is also set forth in RCW 35.13.005, which prohibits any city or town from annexing beyond an urban growth area designated under RCW 36.70A.110.

...

... The Board's holding that CPPs are intended to direct long term transformation of governance in urban areas is entirely consistent with the recent legislative requirement that Boundary Review Board decisions be consistent with CPPs. (RCW 36.93.157). (Bremerton's Answer, pp. 4-5).

#### Discussion of Basis for Reconsideration No. 4

Statutes providing for the authority, prerogatives and obligations of special districts and city and county governments exist independent of the GMA, as do annexation statutes and procedures. The Act does not repeal any of those statutes, nor does it or the Board's Final Decision and Order require that the County attempt to do so, by means of its CPPs or otherwise.

The County is obliged to accept the legislative direction that the GMA provides with regard to designations of urban growth areas and the regulation of land use and delivery of urban governmental services to those areas. Full implementation, over the time span of the plans, will

require many actions by many units of government and individual citizens. The Board has not required nor does it necessarily expect that "every square inch of unincorporated urban growth area" will be annexed by cities.

On the other hand, the Board does expect, as the Act directs, that a new configuration of local governance will be planned so that cities have the **primary** role as urban service providers and the county and special districts have a continuing, albeit **secondary**, role as providers of urban services. The Act does not guarantee that this transformation will take place. However, because the legislature in the language of RCW 36.70A.210(1) has mandated these roles, the county and cities are required to adopt policies that plan for (i.e. anticipate and facilitate) this change.

Therefore, the CPPs cannot erect obstacles to this transformation and still be found in compliance with the requirements of the GMA.

The Board's Final Decision and Order does not preclude the application of a regional solution to a regional problem by a county or other regional body. The Board agrees that regional (viz. county-wide) approaches are appropriate for services that are truly **regional in nature** and not simply services that a county may wish to provide or historically has provided. Yet, the Act, at RCW 36.70A.210(1) clearly states that cities are to be the "primary providers of urban governmental services..." If the legislature had intended for the services listed in that definition to be provided primarily by counties or to be approached as regional services, it had the opportunity to say so and did not.

Kitsap argues that the Board's decision will result in fragmentation of service delivery. Kitsap cites King County's voter approved assumption of the Metro sewer responsibility as a regional solution to a regional problem, and argues that the Board's decision would have instead required those functions to be divided up among cities.<sup>[4]</sup>

Counties may provide non-urban governmental services that are regional in nature in an urban growth area. The definition of "regional" or "regional services" was not an issue before the Board in this case. The Board therefore does not opine as to the meaning of either term. Kitsap County is free to amend the CPPs to identify specific services of a regional nature that it believes are best provided by county government. In discerning what services are 'regional in nature' it is helpful to consider what kinds of services would support or otherwise directly relate to the kinds of tasks that the GMA clearly assigns to counties and cities.

Additionally, counties must plan for urban governmental services to be provided in urban growth areas primarily by cities. Nonetheless, counties still have the ability to be secondary providers of such services in urban growth areas. However, this secondary role should be agreed upon by the affected city or cities and specifically addressed in the CPPs.

The Board will amend its Order to clarify that Kitsap may amend its CPPs to discuss potential future regional services to be delivered by the county, so long as the provision of those services, if they fall within the definition of urban governmental services, does not conflict with the policy direction that cities are to be the primary providers of urban governmental services within urban growth areas.

Finally, the Board will not modify its conclusions regarding Kitsap's CPPs which espouse

citizens ultimately making the decisions that are required by the Growth Management Act. While public participation is the cornerstone of public policy making, this does not absolve elected officials from their ultimate responsibility as the decision makers. Although it may be popular to champion the values of decision-making by citizens rather than by elected officials, the Act obliges elected officials to make decisions that will often be difficult and sometimes unpopular.

#### Basis for Reconsideration No. 5

#### ***The Board ignored the County's reasoning.***

##### a. Kitsap's Position

In its Petition, Kitsap argues:

...  
Under RCW 36.70A.320, the CPP's are presumed valid. The Board should accord great weight to the reasoning of the County in defense of the CPP's because of this presumption. (Petition, p. 6).

##### b. Poulsbo's Position

In its Answer, Poulsbo argues:

...  
The City does not quarrel with the County's position that the countywide planning policies are presumed valid and that therefore the burden should be on the cities to establish their validity. The City respectfully [sic] submits that it has met its burden and that nothing in the Board's decision implies the contrary.

##### c. Port Orchard's Position

In its Reply, Port Orchard argues:

The Board did not ignore the county's reasoning, it considered it and rejected it.

...  
... The Board correctly found that certain portions of Kitsap County's CPP are not in compliance with the clear language and goals of the Growth Management Act.

##### d. Bremerton's Position

In its Answer, Bremerton argues:

...  
The Board's holding as to the nature and purposes of CPPs is supported by the language of the GMA and other statutes, and clearly the policies promoting the status quo delivery of urban services by a variable mix of county government and special purpose districts is contrary to the GMA and appropriately stricken. (Bremerton's Answer, pp. 6-7).

...  
.. the Act does establish a few basic directives, such as concentrating growth to preserve rural areas and resource lands, requiring concurrency of services with growth, and to promote cities as the governing entity in urban areas. The local citizens are not empowered to rewrite the Act on these points, which is what the County's added policy on citizens' rights advocates. (Bremerton's Answer, p. 5).

#### Discussion of Basis for Reconsideration No. 5

The Board carefully reviewed and gave full consideration to the record below, its file in this case, and the briefs and arguments of all parties. That is its statutorily defined purpose and obligation. The Board's duty also includes reading the Act in its totality so as to give meaning to every part of that legislative enactment.

Kitsap's argument that its experience in urban service delivery is different than the rest of the state's experience is no excuse for ignoring the Growth Management Act's clear direction at RCW 36.70A.210(1) regarding the respective roles of cities and counties. If Kitsap believes that the legislature erred in its direction on these points, its remedy is a legislative one. Absent such legislative action, Kitsap County's CPPs are subject to the same provisions as are those of other counties planning under the Growth Management Act.

#### Basis for Reconsideration No. 6

##### ***Reservation of additional authority to supplement Petition.***

The County reserved the right to supplement its Petition within a reasonable time frame because the time for filing such a petition under the Board's Rules of Practice and Procedure "is so short."

#### Discussion of Basis for Reconsideration No. 6

WAC 242-02-830(2) provides:

After issuance of a final decision under this section, any party may file a petition for reconsideration with a board. Such petition must be filed within ten days of mailing of the final decision....

RCW 36.70A.270(6) requires that:

[A]ll proceedings before the board or any of its members shall be conducted in accordance with such administrative rules of practice and procedure as the boards jointly prescribe....

The administrative procedure act, chapter 34.05 RCW, shall govern the administrative rules of practice and procedure adopted by the boards.

Pursuant to RCW 34.05.470(1):

Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The place of filing and other procedures, if any, shall be specified by agency rule.

The Board issued its Final Decision and Order in this case on April 6, 1993. Copies were mailed and faxed to each of the parties on that date. Service by electronic telefacsimile transmission (fax) is authorized by RCW 34.05.010(18). [See also WAC 242-02-320]. Accordingly, the parties had ten days from April 6, 1993 to file a petition for reconsideration. The County's Petition for Reconsideration was filed on April 16, 1993. No subsequent documents have been filed by Kitsap County, nor would the Board have permitted them in light of the Board's Rules and the Administrative Procedure Act's time limitation.

### **C.ORDER**

The Board's Final Decision and Order, dated April 6, 1993, stands as written and is hereby affirmed, with the exceptions noted below. The Final Decision and Order is hereby modified as follows:

1.The Board inserts the word "primarily" into the discussion portion of its Order on page 22, lines 22 through 24, such that it reads as follows:

"... The long term purpose of county-wide planning policies is to facilitate the transformation of local governance in urban growth areas so that urban governmental services are provided **primarily** by cities and rural and regional services are provided by counties..."

2.The Board adds a new paragraph to Conclusion No. 3 of its Final Decision and Order at page 37, line 21 as follows:

Counties may provide non-urban governmental services in an urban growth area that are regional in nature.Kitsap County is therefore free to amend the CPPs to identify specific services of a regional nature that it believes are best provided by county government.The County may also provide services within urban growth areas that fall within the definition of urban governmental services with the agreement of the affected city or cities, so long as the city or cities remain the primary provider(s) of such services.Kitsap must identify in the CPPs a process for the County and the cities to collaboratively agree on which, if any, urban governmental services are best coordinated or otherwise provided by the County subject to such agreement.

3.The last sentence of the Board's Final Decision and Order (on p. 47, lines 21-22) is amended as follows:

Pursuant to RCW 36.70A.300(1)(b), the Board directs Kitsap County to comply with this Final Decision and Order by 5:00 p.m. on August 17, 1993.

So ORDERED this 17th day of May, 1993.

CENTRAL PUGET SOUND GROWTH PLANNING HEARINGS BOARD

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M. Peter Philley, Board Member

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Joseph W. Tovar, AICP, Board Member

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Chris Smith Towne, Board Member

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<sup>[1]</sup>Board's Final Decision and Order at page 22, lines 22 through 24.

<sup>[2]</sup>"Urban governmental services" are defined at RCW 36.70A.030(16) to include:

those governmental services historically and typically delivered by cities, and include storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with nonurban areas. (emphasis added).

<sup>[3]</sup>"Urban growth" is defined at RCW 36.70A.030(14) as:

...growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of the land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources.When allowed to spread over wide areas, urban growth typically requires urban governmental services."Characterized by urban growth" refers to land

having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

<sup>[4]</sup>The Board notes that the King County assumption of Metro has not been brought before us. No legal issues, briefs, facts or arguments have been entered. Therefore, the Board renders no judgment with regard to the specifics of the Metro/King County merger.