

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

BREMERTON, et al.,)	Case No. 95-3-0039c
Petitioners,)	coordinated with
v.)	Case No. 97-3-0024c
KITSAP COUNTY,)	ORDER ON MOTIONS
Respondent.)	
_____)	
PORT GAMBLE, et al.,)	
Petitioners,)	
v.)	
KITSAP COUNTY,)))))))))	
Respondent.	_____	

I. PROCEDURAL BACKGROUND

On March 27, 1997, in the matter of *Bremerton, et al., v. Kitsap County*, CPSGMHB Case No. 95-3-0039c (***Bremerton***), the Central Puget Sound Growth Management Hearings Board (the **Board**) issued a “Notice of Legal Issues, Amended Schedule, Participation by Additional Parties and Coordination with Case No. 97-3-0024c” (the **Bremerton Coordination Notice**).

On March 28, 1997, in the matter of *Port Gamble, et al., v. Kitsap County*, CPSGMHB Case No. 97-3-0024c (***Port Gamble***), the Board issued a “Second Order of Consolidation, Order on Motion to Intervene and Prehearing Order” (the **Port Gamble Prehearing Order**). On this same date, the Board received an “Amended Petition for Review” from the Port Gamble S’Klallam Tribe as to its portion of the *Port Gamble* case.

On March 31, 1997, the Board received the following pleadings in the *Port Gamble* case: “Manke Lumber Company, Inc.’s Motion to Intervene” (the **Manke Motion to Intervene**), together with a “Memorandum in Support of Manke Lumber Company, Inc.’s Motion to Intervene,” and the “Declaration of Holly Manke White”; and a “Notice of Appearance” from Sue A. Tanner on behalf of the County.

On April 1, 1997, the Board received from the County the following motions regarding the *Port Gamble* case: “Kitsap County’s Motion to Dismiss Petitions for Review filed by Banner Forest Committee of Olalla Community Council and Illahee Trust Land Task Force of Illahee Community” (the **County’s Motion to Dismiss Banner Forest**), together with a “Declaration of John P. Vodopich in support of Kitsap County’s Motion to Dismiss Petition of Banner Forest Committee of Olalla Community Council and Illahee Trust Land Task Force of Illahee

Community,” and the “Declaration of Holly P. Anderson in Support of Kitsap County’s Motion to Dismiss Petition of Banner Forest Committee of Olalla Community Council and Illahee Trust Land Task Force of Illahee Community”; “Kitsap County’s Motion to Dismiss Port Gamble S’Klallam Tribe’s Petition for Review in Part” (the **County’s Motion to Dismiss Port Gamble S’Klallam PFR in Part**), together with a “Declaration of John P. Vodopich in Support of Kitsap County’s Motion to Dismiss Petition of Port Gamble S’Klallam Tribe”; “Kitsap County’s Motion to Dismiss the Suquamish Tribe’s Petition for Review in Part” (the **County’s Motion to Dismiss Suquamish PFR in Part**), together with the “Declaration of John P. Vodopich in Support of Kitsap County’s Motion to Dismiss Petition of Suquamish Tribe”; “Kitsap County’s Motion to Dismiss Petition Filed by Union River Basin Protection Association and Association to Protect Anderson Creek in Part” (the **County’s Motion to Dismiss Union River and APAC in Part**), together with the “Declaration of John P. Vodopich in Support of Kitsap County’s Motion to Dismiss Petition of Union River and Anderson Creek”; and “Kitsap County’s Motion to Dismiss ‘Petition of Gloria Agas, Pepito Soriano and Rosalinda Soriano’” (the **County’s Motion to Dismiss Agas**), together with a “Declaration of John P. Vodopich in Support of Kitsap County’s Motion to Dismiss Petition of Agas and Soriano,” and the “Declaration of Holly P. Anderson in Support of Kitsap County’s Motion to Dismiss ‘Petition’ of Gloria Agas, Pepito Soriano, and Rosalinda Soriano.”

Also, on April 1, 1997, the Board received from the County the following motions regarding the *Bremerton* case: “Kitsap County’s Motion to Dismiss Participation of Port of Bremerton in Part” (the **County’s Motion to Dismiss the Port’s Participation in Part**), together with a “Declaration of John P. Vodopich in Support of Kitsap County’s Motion to Dismiss Participation of Port of Bremerton in Part”; “Kitsap County’s Motion to Dismiss Participation of Union River Basin Protection Association and Elaine Manheimer in Part” (the **County’s Motion to Dismiss Participation of Union River and Manheimer in Part**), together with the “Declaration of John P. Vodopich in Support of Kitsap County’s Motion to Dismiss Participation of Union River Basin Protection Association and Elaine Manheimer in Part”; “Kitsap County’s Motion to Dismiss Participation of Apple Tree Point Partners in Part” (the **County’s Motion to Dismiss Participation of Apple Tree Point in Part**), together with the “Declaration of John P. Vodopich in Support of Kitsap County’s Motion to Dismiss Participation of Apple Tree Point Partners in Part”; “Kitsap County’s Motion to Dismiss Participation of Association to Protect Anderson Creek and Helen E. Havens-Saunders In Part” (the **County’s Motion to Dismiss Participation of APAC and Helen E. Havens-Saunders In Part**), together with the “Declaration of John P. Vodopich in Support of Kitsap County’s Motion to Dismiss Participation of Association to Protect Anderson Creek and Helen E. Havens-Saunders In Part.”

On April 2, 1997, the Board received two documents regarding the *Bremerton* case: “Manke Lumber Company, Inc.’s Preliminary Exhibit and Witness List” and the “Preliminary Exhibit List of Intervenor McCormick Land Company.”

On April 3, 1997, the Board received the “Port Blakely Tree Farms’ Preliminary Exhibit and Witness List” and the “Pope Resources’ Preliminary Exhibit and Witness List,” both of which

were captioned as pertaining to the coordinated *Bremerton* and *Port Gamble* cases (the **coordinated cases**).

On April 4, 1997, the Board received from Martin P. Hayes a “Motion for Expanded Participation, Opposing Kitsap County Compliance” (the **Hayes Motion**) in the *Port Gamble* case. On the same date, the Board received a “Motion to Intervene” from the State of Washington, Department of Natural Resources (**DNR**), by and through the Commissioner of Public Lands (the **DNR Motion to Intervene**) in Case Nos. 97-3-0016 and 97-3-0022 (Consolidated Case No. 97-3-0024c). On this same date, the Board received two motions regarding the consolidated cases: “Pope Resources’ Motion to Supplement the Record” (the **Pope Resources Motion to Supplement**) and “Port Blakely Tree Farms’ Motion to Supplement the Record” (the **Port Blakely Motion to Supplement**).

On April 7, 1997, the Board issued an Order Amending Schedule and Notice of Clarification in the coordinated cases. On this same date, the Board received “Kitsap County’s Preliminary Exhibit List” as to the *Bremerton* case, and “Kitsap County’s Preliminary Exhibit List” as to the *Port Gamble* case.

On April 8, 1997, the Board received from the Port Gamble S’Klallam Tribe an “Amended Petition for Review” as to the *Port Gamble* case. On this same date, the Board received “Suquamish Tribe’s Opposition to Kitsap County’s Motion to Dismiss” and “Suquamish Tribe’s Brief in Opposition to Kitsap County’s Motion to Dismiss” regarding the *Port Gamble* case. On this same date, the Board received “Suquamish Tribe’s Preliminary Exhibit List,” which pertained to the *Bremerton* case.

On April 9, 1997, the Board received “Overton & Associates, Peter E. Overton and Alpine Evergreen Co., Inc.’s Preliminary Exhibit List,” which pertained to the coordinated cases.

On April 10, 1997, the Board received from Elaine Manheimer and Union River Basin Protection Association and from Helen E. Havens-Saunders and the Association to Protect Anderson Creek, an “Amended Petition for Review” pertaining to the *Port Gamble* case.

On April 11, 1997, the Board received the following pleadings pertaining to the coordinated cases: “Memorandum of Port of Bremerton in Response in Opposition to Kitsap County’s Motion to Dismiss in Part and a “Declaration of Kenneth W. Atteberry”; “Port Gamble S’Klallam Tribe’s Response to Kitsap County’s Motion to Dismiss,” and “Preliminary Exhibit List for Port Gamble S’Klallam Tribe”; “Preliminary Exhibit List for KCRP and ARR”; “Rainier Evergreen’s Preliminary Exhibit List”; and from Ronald R. Ross a “Notice of Withdrawal and Consent to Substitution of Attorneys.”

Also on April 11, 1997, pertaining to the *Port Gamble* case, the Board received “Union River Basin Protection Association’s and Elaine Manheimer’s and Association to Protect Anderson Creek and Helen Havens-Saunders’ Opposition to Kitsap County’s Motion to Dismiss” and “Union River Basin Protection Association’s and Elaine Manheimer’s and Association to Protect Anderson Creek’s and Helen Havens-Saunders’ Preliminary Exhibit List.” On this same date, as pertains to the *Bremerton* case, the Board received from Apple Tree Point Partners “Apple Tree Point Partners’ Response to Kitsap County’s Motion to Dismiss Participation,” “Amended Notice

of Participation” and a “Declaration of James Lindsay.”

On April 14, 1997, the Board received a letter from James C. Tracy clarifying his representation as to parties in the *Bremerton* and *Port Gamble* cases. On this same date, pertaining to the *Port Gamble* case, the Board received “Banner Forest Committee of Olalla Community Council Response to Kitsap County’s Motion to Dismiss Petition for Review filed by the Banner Forest Committee.”

On April 16, 1997, the Board received an “Addendum to Pope Resources’ Motion to Supplement the Record” as to the coordinated cases.

On April 17, 1997, the Board received the following pleadings from the County regarding the coordinated cases: “Motion to Bifurcate Decision on Kitsap County’s Motions to Dismiss, or, In the Alternative, to Extend Time for County to File Reply on Motions” (the **County’s Motion to Bifurcate or Extend Time**), “Kitsap County’s Withdrawal of Motion to Dismiss in Part Petition Filed by Port Gamble S’Klallam Tribe,” “Kitsap County’s Withdrawal of Motion to Dismiss Participation by Port of Bremerton,” “Kitsap County’s Reply on Motion to Dismiss Petition for Review filed by Banner Forest” with attached “Declaration of John Vodopich,” and “Kitsap County’s Reply on Motions to Dismiss Parts of Petition filed by Suquamish Tribe, and Parts of Petitions Filed, and Participation By, Association to Protect Anderson Creek, Union River Basin Protection Association.”

On April 18, 1997, the Board received “State’s Preliminary Exhibit List.”

On April 21, 1997, the Board received “Port of Bremerton’s Preliminary Exhibit List.”

II. MOTIONS TO INTERVENE IN PORT GAMBLE CASE

The Manke Motion to Intervene is **granted**.

The DNR Motion to Intervene is **granted**.

III. MOTIONS TO SUPPLEMENT THE RECORD

The parties are cautioned that each exhibit submitted with their briefs must be **relevant** to their specific legal issues before the Board. Its listing on the Index as a part of the record below, or its admission as a supplemental exhibit, does not necessarily mean that a specific exhibit is relevant to those legal issues, as set forth in the Bremerton Coordination Notice at Section III or the Port Gamble Prehearing Order at Section V.

In the summary tables below:

- Exhibits indicated as “Admitted” become supplemental exhibits.
- Exhibits indicated as “Admitted as part of record” are, instead, exhibits from the record below that were inadvertently omitted from the Index, and the County is directed to amend its Index to incorporate those documents.

A.Pope Resources Motion to Supplement

Proposed Exhibit: Documents	Ruling
1.6 oversized aerial photos of the Port Gamble Area and 6 reduced copies	Admitted.

B.Port Blakely Motion to Supplement

Proposed Exhibit: Documents	Ruling
1.Letter from John Adams to Ron Perkerewicz dated 6/12/96	Admitted as Part of Record
2.Letter from John Adams to Kitsap County Board of Commissioners dated 6/5/96	Admitted as Part of Record
3.Letter from John Adams to Kitsap Planning Commissioners dated 4/24/96	Admitted as Part of Record
4.Letter from Kenneth Olson to Kitsap County Commissioners dated 2/29/96	Admitted as Part of Record

IV. COUNTY'S MOTIONS TO DISMISS

STANDING

Eight motions to dismiss were received from the County: three asked to dismiss participants in *Bremerton*; five asked to dismiss petitioners in *Port Gamble*. The County presented several arguments to demonstrate lack of standing of participants and petitioners.

Issue-Specific Participation

The most common argument offered by the County can be characterized as “issue-specific-participation requirement.” The County argues that, in order to raise issues before the Board, participants and petitioners must have addressed those specific issues when they appeared before the County during the public participation process regarding the adoption of the Plan. This is an

argument that has been specifically rejected by this Board.

In *Sky Valley v. Snohomish County*, CPSGMHB Case No. 95-3-0068 (*Sky Valley*), Final Decision and Order (March 12, 1996), this Board stated:

The Board has never held, nor does the Act state, that the triggering event or action that conveys standing to a person must also describe the total scope of issues on which a person may subsequently request review. According to the Board's holdings and the Act, the scope of the Board's review is defined by the "detailed statement of issues" that a petitioner is required to include in its request for review. RCW 36.70A.290(1).

If the Board were to accept the County's position that a person must comment on every issue of a plan in order to have the right to later file a petition for review challenging specific issues relating to the plan, a person would have to do more than attend. A person would have to prepare a briefing of every conceivable issue that may be of concern, before stating to the appropriate legislative body the initial fact of concern. Moreover, it would be virtually impossible to obtain appearance standing on every conceivable issue in those frequent instances when persons are given a limited amount of time to speak. Raising the requirements to achieve standing to this higher standard would create a burden on citizens far beyond what is currently included in the GMA. Such a ruling might well preclude the type of citizen involvement that is one of the cornerstones of the Act. Therefore, the Board rejects it.

Sky Valley, at 23.

After a review of the motions and briefs in this case, and revisiting the *Sky Valley* ruling, the Board again rejects this argument.

The County relies on *King County v. Boundary Review Board* [***Boundary Review Board***], 122 Wn.2d 648 (1993), for the proposition that an "appellate court [may refuse] to consider . . . 'issues of serious public importance' relating to GMA because petitioner[s] failed to raise them in a meaningful way before the agency below." The County misapplies *Boundary Review Board*.

As the title implies, *Boundary Review Board* is a judicial appeal of a decision of a Boundary Review Board. The Washington Supreme Court declined to consider the effect of an ordinance, even though it raised "issues of serious public importance," because the ordinance was not raised before the Boundary Review Board (a quasi-judicial agency). *Boundary Review Board*, at 668-69. By analogy to the present controversy, a court reviewing this Board's decision may decline to consider issues that were not raised before this Board (a quasi-judicial agency). *Boundary Review Board* does not support the proposition that, for persons to raise issues before this Board, they must first raise them specifically before the legislative decision makers.

The County's motions to dismiss Union River and Anderson Creek; Apple Tree Point; and

Suquamish Tribe is **denied**. The Board notes that the County withdrew its motions to dismiss Port of Bremerton and Port Gamble S'Klallam Tribe.

Union River and APAC – Specific Issues

The County's Motion to Dismiss Union River and APAC addressed portions of the original petitions filed by these parties. These two parties, on April 10, 1997, filed an "Amended Petition for Review" which presented for resolution the issues set forth in the Bremerton Coordination Notice. Because the scope of briefing and argument by Union River and APAC is delimited by the twenty-one issues set forth in the Bremerton Coordination Notice, not the sub-issues contained in the original petition for review, the County's Motion to Dismiss Union River and APAC in Part, is **denied**.

Banner Forest and Illahee

The County moved to dismiss Banner Forest and Illahee because the record does not reveal that either organization participated in the adoption of the Plan. Illahee did not respond to the County's motion. Banner Forest respond by providing declarations from several members asserting that each "testified for the Banner Forest Committee of Olalla Community Council before the Kitsap County Board of Commissioners on September 16, 1996, during the last public hearing on the Kitsap County Comprehensive Plan" The Banner Forest members do not allege that they identified themselves as representatives of Banner Forest. This omission is fatal.

The Board has explained how an organization obtains standing:

For an organization to have "appeared," . . . testifying members of an organization must identify themselves as representing or appearing on behalf of the organization This requirement gives notice to the local government that the people before it represent more than individual interests, that they are part of a larger group.

Sky Valley, at 21.

The declarations show that individuals who are members of Banner Forest testified before the County, and that the individuals intended to speak on behalf of Banner Forest. This is not enough. For Banner Forest to obtain standing, at least one of the group's members needed to inform the County that he or she was speaking on behalf of Banner Forest.

The County's motion to dismiss Banner Forest is **granted**.

Illahee did not oppose the County's motion to dismiss. The County's motion to dismiss Illahee is **granted**.

Gloria Agas, Pepito Soriano, and Rosalinda Soriano [collectively "Agas"]

The County moved to dismiss the Agas “petition” for three reasons: the “petition” fails to meet the requirements for a petition for review; the “petition” is untimely; and Agas does not have standing. Agas did not respond to the County’s motion.

The Board agrees that Agas’ petition is untimely. The sixty-day appeal period ended on March 10, 1997. Agas filed a “short petition” for review on March 11, 1997. The Board’s jurisdiction is limited by the legislature to petitions filed within sixty days of publication of the challenged legislative action. RCW 36.70A.290(2). The Board is without jurisdiction to hear Agas’ petition.

In addition, there is no evidence that Agas participated in the adoption of the Plan. Agas has not established standing.

The Board need not address the question of whether Agas’ petition complied with the Board’s rules or the GMA. The County’s motion to dismiss Agas is **granted**.

Apple Tree Point

The County moved to dismiss Apple Tree Point Partners because the record does not reveal that Apple Tree Point participated in the adoption of the Plan. Apple Tree Point responds by providing a declaration from Mr. James Lindsay showing that Mr. Lindsay testified before the County and identified himself as representing the “Bosanko family.” Mr. Lindsay does not allege that he identified himself as representing Apple Tree Point. As with Banner Forest and Illahee, *supra*, this omission is fatal. For Apple Tree Point to obtain participation standing under RCW 36.70A.280(2)(b), its representative needed to inform the County that it was speaking on behalf of Apple Tree Point Partners.

As an alternative to participation standing under section .280(2)(b), the GMA grants standing to a party who meets the requirements of RCW 34.05.530 of the Administrative Procedure Act (**APA standing**). See RCW 36.70A.280(2)(d).

In its response to the motion to dismiss, Apple Tree Point raises, for the first time, APA standing. The Notice of Participation does not allege APA standing. Because the ability to participate in a compliance proceeding under RCW 36.70A.330(2) requires “standing to challenge the legislation enacted in response to the board’s final order,” the standing requirements of RCW 36.70A.280(2) apply to participation under section .330(2).

This Board has stated that petitions for review relying on APA standing “must either allege that the petitioners are within the zone of interests of the GMA and that they have been injured by the local government’s GMA action, or they must cite to the specific GMA standing provision under which they qualify (i.e., RCW 36.70A.280(2)’s language ‘qualified pursuant to RCW 34.05.530’).” *Hapsmith v. City of Auburn (Hapsmith)*, CPSGMHB Case No. 95-3-0075, Final Decision and Order (May 10, 1996), at 16. Just as a petition for review must allege the type of

standing relied upon, so too must a notice of participation. Because Apple Tree Point's Notice of Participation failed to allege APA standing, Apple Tree Point cannot now assert APA standing.

summary of rulings on motions to dismiss

A. motions to dismiss *BREMERTON* participation

Port of Bremerton, In Part	Withdrawn
Union River and Manheimer, in Part	Denied
Apple Tree Point, in Part	Granted as to Apple Tree Point, denied as to individuals.
APAC & Helen E. Havens-Saunders, in Part	Denied

B. motions to dismiss *PORT GAMBLE* petitions for review

Banner Forest and Illahee	Granted
Port Gamble S'Klallam, in Part	Withdrawn
Suquamish, in Part	Denied
Union River and APAC, in Part	Denied
Agas	Granted

V. OTHER MOTIONS

The Hayes Motion for Expanded Participation is **granted**.

The County's Motion to Bifurcate or Extend Time is **denied**.

So ORDERED this 22nd day of April, 1997.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Joseph W. Tovar, AICP
Board Member

Chris Smith Towne
Board Member