

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

EVERETT SHORELINES)	(Snohomish County Superior Court
COALITION, <i>et. al.</i> ,)	Cause No. 03-2-05830-9)
Petitioners,)	
v.)	Re: CPSGMHB Case No. 02-3-0009c,
)	<i>Everett Shorelines Coalition, et al., v.</i>
CITY OF EVERETT and)	<i>City of Everett and Washington State</i>
WASHINGTON STATE)	<i>Department of Ecology</i>
DEPARTMENT OF ECOLOGY,)	
)	Order Granting Certificate of
Respondents.)	Appealability
And)	
)	
PORT OF EVERETT,)	
)	
Intervenor.)	
)	
)	
)	

I. APPLICATIONS FOR CERTIFICATES OF APPEALABILITY

On March 24, 2003, the Central Puget Sound Growth Management Hearings Board (the **Board**) received “Everett’s Application to the Central [Puget Sound] Growth Management Hearings Board for a Certificate of Appealability to the Washington State Court of Appeals” (the **City’s Application**.)

On April 8, 2003, the Board received “Port of Everett’s Joinder in City of Everett’s Application to the Central [Puget Sound] Growth Management Hearings Board for a Certificate of Appealability to the Washington State Court of Appeals” (the **Port’s Joinder**.)

The Board’s jurisdiction is generally limited^[1] to addressing whether local governments within the Puget Sound region have complied with the goals and requirements of the state’s Growth Management Act (**GMA** - Chapter 36.70A RCW) and whether local governments with that region, and the Department of Ecology, have complied with the provisions of the Shoreline

Management Act (SMA – Chapter 90.58 RCW).

II. DISCUSSION AND FINDINGS

The Board’s authority regarding Certificates of Appealability is set forth in RCW 34.05.518, which provides in relevant part:

(3)(a) For the purposes of direct review of final decisions of environmental boards, environmental boards include those boards identified in RCW 43.12B.005 and growth management hearings boards identified in RCW 36.70A.250.

(b) An environmental board may issue a certificate of Appealability if it finds that *delay* in obtaining a final and prompt determination of the issues *would be detrimental to any party or the public interest **and either:***

- (i) *Fundamental and urgent state-wide or regional issues are raised; **or***
- (ii) *The proceeding is likely to have significant precedential value.*

(Emphasis supplied.)

The Board is bound by the criteria established in RCW 34.05.518(3)(b)(i-ii) in determining whether to issue a Certificate of Appealability. In applying these criteria to the present case, and in evaluating the argument presented by the City’s Application, the Board finds and concludes as follows.

In arguing that the first prong of RCW 34.05.518(3)(b) is met (*i.e.*, the interest of a party), the City claims that it “will incur significant costs to ensure its scientific studies meet the requirements for best available science as the Board enumerated, and to bring its SMP into compliance with the Board’s order.” City’s Application, at 5. The Board cannot judge how significant the costs might be for the City, or any local government, to comply with RCW 36.70A.172. In any event, the Board notes that the City has not yet amended its development regulations to comply with the best available science provisions of RCW 36.70A.172, and therefore will have to “incur” these costs by the December 2004 deadline for jurisdictions in Central Puget Sound. RCW 36.70A.130(4)(a).^[2]

Nevertheless, the Board is aware that the larger question of GMA/SMA integration is a matter of continuing and vital interest to local governments, state agencies, environmental, development and other interested parties throughout this state. Moreover, if Everett is correct that other local governments will delay the updating of their Shoreline Master Programs until this matter is

ultimately resolved, then for the interim period, this region would travel further down a path of habitat degradation and species extinction. For this reason, the Board finds that a delay in obtaining a final and prompt determination of these issues would be detrimental to the general public interest, and concludes that the second prong (*i.e.*, the public interest) of RCW 34.05.518 (3)(b) is met.

The Board finds and concludes that the question of integration of the SMA and the GMA does constitute a fundamental issue of regional, if not state-wide, scope and that the proceeding is likely to have significant precedential value.

III. CONCLUSION

Pursuant to RCW 34.05.518, the Board **grants** the City's Application for a Certificate of Appealability.

So ORDERED this 10th day of April 2003.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Lois H. North
Board Member

Joseph W. Tovar, AICP
Board Member

[\[1\]](#) See: RCW 36.70A.280

[\[2\]](#) By separate order, the Board has approved the City's proposed Alternative Compliance Schedule, which sets December 31, 2004 as the deadline for the City to adopt revisions to its Shoreline Master Program.