



“Issues Presented” in this case. . . . This motion is brought to resolve “threshold” questions of Board jurisdiction and the formulation of Salish’s “Issues Presented.” PDR, at 4.

## **II. DISCUSSION**

The Washington State Administrative Procedures Act enables state agencies, such as the Growth Management Hearings Boards, to adopt provisions for declaratory rulings in their agency rules. *See*, RCW 34.05.240(2). The three Growth Management Hearings Boards have done so in their joint rules. The Board’s Rules of Practice and Procedure provide:

Any person may petition a board for a declaratory ruling about the applicability to specific circumstances of a rule, order or statute *within the board’s jurisdiction*.

WAC 242-02-910(1), (emphasis supplied).

Generally, this provision enables the Boards to provide clarification as to whether the *GMA*, and referenced statutes and related rules, apply to a given situation. It is not disputed that the City of Kirkland is a GMA planning jurisdiction subject to the goals and requirements of the Act, nor is disputed that the Board has jurisdiction to hear and resolve petitions challenging compliance with the GMA. *See* RCW 36.70A.280. Instead, Petitioner asks the Board to determine its own jurisdiction and clarify the issues presented by Petitioner. *See* PDR, at 2 and 4.

As noted above, the Board has discretion to issue declaratory rulings regarding the applicability of the GMA to matters *within its jurisdiction*. The “threshold” issue posed by Petitioner in the PDR, questions the Board’s jurisdiction, thereby making it inappropriate for the Board to address this issue in the context of a declaratory ruling. The appropriate time and place for this issue to be posed, briefed, and decided is in the context of Salish Village’s petition for review – CPSGMHB Case No. 02-3-0022.

The Board’s prehearing order (**PHO**) in the matter of *Salish Village v. City of Kirkland*, CPSGMHB Case No. 02-3-0022 explains the Board’s procedures for dispositive motions, including challenges to Board jurisdiction, and sets forth a schedule for briefing and resolving such issues. If Petitioner wishes to move and argue that the Board does not have subject matter jurisdiction over the challenged action [Kirkland’s Ordinance No. 3862] Petitioner may do so within the timeframes set forth in the PHO.

Further, “clarifying the issues” is not within the scope of a declaratory ruling. Following the PHC, Petitioner was given the opportunity to winnow and/or restate and clarify the issues posed for the Board to resolve. Petitioner chose not to, consequently, the “Issues Presented” as stated in the PFR are those that are set forth in the Board’s PHO. Those issues provide the context for

further proceedings in Case No. 02-3-0022.

Therefore, for the reasons stated above, the Board **declines to issue a declaratory ruling** in this matter.

### **III. ORDER ON DECLARATORY RULING**

Based upon review of the PDR, the Board's Rules of Practice and Procedure, the Act, prior Board decisions, and having considered and deliberated on the matter, the Board ORDERS:

The Board **declines** to issue a declaratory ruling. Salish Villages Petition for Declaratory Ruling [CPSGMHB Case No. 03-3-0001pdr] is **denied** and **dismissed**.

So ORDERED this 4<sup>th</sup> day of February, 2003.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD<sup>[3]</sup>

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Edward G. McGuire, AICP

Board Member

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Lois H. North

Board Member

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<sup>[1]</sup> On January 14, 2003, at the parties' request, the Board issued a "Notice of Revised Prehearing Conference Date."

<sup>[2]</sup> Petitioner originally filed an action in superior court challenging the City of Kirkland's action. The Honorable Sharon Armstrong of King County Superior Court, determined that the City's "governmental action is legislative and LUPA does not apply; remaining claims must be directed first to the GMHB." Order on Civil Motions; Cause No. 02-2-29881-8 SEA, December 6, 2002, at 1. See also, Order Granting the City's Motion to Dismiss LUPA Petition and Statutory and Constitutional Writs; and Order and Judgment of Dismissal.

<sup>[3]</sup> Board Member Tovar recused himself from the Salish Village PFR and likewise, did not participate in reaching this decision on the PDR.