

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

KING COUNTY,	)	
	)	<b>Case No. 03-3-0011</b>
Petitioner,	)	
	)	
and	)	
	)	
CITY OF RENTON,	)	
	)	
Intervenor,	)	
	)	
v.	)	
	)	
SNOHOMISH COUNTY,	)	<b>ORDER on RECONSIDERATION and CLARIFICATION</b>
	)	
Respondent,	)	
	)	
and	)	
	)	
CITY OF EDMONDS,	)	
	)	
Intervenor.	)	
	)	

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**I. Background**

On October 13, 2003, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued the Final Decision and Order (the **FDO**) in the above captioned case.

On October 23, 2003, the Board received “Snohomish County’s Motion for Reconsideration/Clarification” (the **Snohomish County Motion**).

On October 29, 2003, the Board received “City of Renton’s Response to Snohomish County’s Motion for Reconsideration and Motion for Order of Invalidity concerning Moratorium by Snohomish County on Wastewater Treatment Facilities” (the **Renton Response**).

On October 30, 2003, the Board received “King County’s Response to Snohomish County’s

Motion for Reconsideration and Clarification” (the **King County Response**). Attached to the King County Response were three exhibits: Exhibit A is a copy of Snohomish County Emergency Ordinance No. 03-145 which is instituted a moratorium on acceptance of applications for permits for certain wastewater treatment facilities. Exhibit B is a copy of the “Countywide Planning Policies for Snohomish County” last amended on April 11, 2000. Exhibit C is a conformed copy of an “Interlocal Agreement to Implement Common Siting Processes for Essential Public Facilities” signed by Snohomish County Executive Robert Drewel on December 12, 2001.

On November 4, 2003, the Board received “Snohomish County’s Reply in Opposition to King County and Renton’s Responses on County’s Motion for Reconsideration/Clarification” (the **Snohomish County Reply**).

On November 10, 2003, the Board issued its “Order Re-opening Hearing on the Merits, Order Supplementing the Record, and Order Setting Date for Hearing” (**11/10/03 Order**). The 11/10/03 Order requested a certified copy of Emergency Ordinance No. 03-145 as a supplement to the record, and established December 1, 2003 as the date for the re-opened hearing on the merits to consider the motions of the parties.

On November 18, 2003, the Board received “Snohomish County’s Certified Copy of Ordinance No. 03-145” (**Ord. No. 03-145**)

On December 1, 2003, the Board received from Snohomish County a “Notice of Appearance Millie M. Judge.”

Also on December 1, 2003, the Board reopened the hearing in the matter of *King County v. Snohomish County* [*City of Renton and City of Edmonds – Intervenors*], CPSGMHB Case No. 03-3-0011. Present for the Board were Joseph W. Tovar, Presiding Officer and Board Member Edward G. McGuire. Snohomish County was represented by Millie M. Judge. King County was represented by J. Tayloe Washburn and Verna P. Bromley. Lawrence J. Warren appeared for Intervenor City of Redmond. Court reporting was provided by Brenda Steinman of Mills & Lessard, Seattle. The Board ordered preparation of a Transcript of the Re-Opened Hearing (the **Transcript**.)

Also on December 1, 2003, the Board received “Snohomish County’s Response to the Board’s Request for Additional Information at Oral Argument” (**Snohomish County’s Additional Information**).

## **II. DISCUSSION of MOTION FOR RECONSIDERATION and CLARIFICATION**

## Positions of the Parties

The Snohomish County Motion raises two grounds for reconsideration. First, Snohomish County asks the Board to reconsider the compliance deadline set forth in the FDO. Snohomish Motion, at 2-4. Second, Snohomish County asks the Board to clarify the FDO with respect to the CTED Guidelines set forth in WAC 365-195-340(2)(b)(vi). Snohomish County notes that, unlike the Board's FDO, the CTED Guidelines do not distinguish between local, regional or state essential facilities. Snohomish County Motion, at 4-5.

King County disputes the necessity or advisability of the Board revising the compliance deadline set forth in the FDO. King County Response, at 8-14. King County contends that there is no need for the Board to clarify the language of the FDO with respect to the CTED guidelines. King County Response, at 14-15. Renton agrees with King County on these two points. Renton Response, at 3.

In addition, King County points to the recent enactment of Snohomish County Emergency Ordinance No. 03-145 and argues that this interim ordinance is subject to the FDO determination of Invalidity until a compliance hearing is held and the Order of Invalidity is modified or rescinded. King County Response, at 2-8. Renton joins in this argument, alleging that the emergency ordinance is a "flagrant violation" of the GMA and the Board's FDO. Renton

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Response, at 3-4. Renton argues that RCW 36.70A.302(7) by its nature presupposes that the Board has continuing jurisdiction in this matter (Transcript, at 36-37) and that it is therefore appropriate for the Board to consider whether Ordinance No. 03-145 complies with the GMA as interpreted in the FDO.

The Snohomish County Reply argues that the Board should grant the Motion and reject the claims made by King County and Renton regarding Ordinance No. 03-145. Snohomish County Reply, at 2-10. Snohomish County contends that it would be premature for the Board to consider the question of Ordinance No. 03-145 as part of the present matter and argues that the Board could not address King County's and Renton's claims about compliance of that Ordinance absent the filing of a new PFR. Snohomish County Reply, at 2.

## Board Discussion

### Extension of time:

RCW 36.70A.300(3)(b) requires the Board to specify in its FDO, "a reasonable time not in excess of one hundred and eighty days, or such longer time period as determined by the board in cases of unusual scope or complexity, within which the . . . county . . . shall comply with the requirements

of this chapter.”

The Board’s October 13, 2003 FDO gave the County until January 14, 2004 to take legislative action to comply with the GMA; the FDO also established February 12, 2004 as the date for the compliance hearing. The Board did not view this case as one of unusual scope or complexity and consequently gave the County 93 days to achieve compliance with the Act.

After considering the arguments presented at the re-opened Hearing on the Merits and in the pleadings, including Snohomish County’s Additional Information, the Board remains unpersuaded that this matter is one of unusual scope or complexity. The Board is unconvinced that Snohomish County is barred from complying with the Board’s FDO in a timely fashion due to an obligation to first amend its CPPs, its Plan or inter-**local** agreements with Snohomish County cities. Even if that were the case (*e.g.*, CPP language requiring completion of certain procedural steps prior to achieving compliance with the FDO, or CPPs giving explicit policy direction contrary to substantive direction in an FDO), such locally adopted enactments cannot shield a local government from its duty to comply with the statutory requirements of the GMA as interpreted by the Board’s Order.

Therefore, Snohomish County’s request for additional time to comply is **denied**. The compliance schedule set forth in the Board’s FDO is **affirmed**.

#### CTED Guidelines:

RCW 36.70A.320(3) directs the Board to “consider the criteria adopted by the department under RCW 36.70A.190(4).” CTED’s Procedural Guidelines (Chapter 365-195 WAC) are the criteria adopted by CTED to comply with this GMA directive. Snohomish County contends that the Board’s decision varies from the CTED Guidelines for essential public facilities - WAC 365-195-340(2)(b)(vi) and argues that the FDO makes a distinction between a regional EPF process and a local EPF process. Transcript, at 41.

Snohomish County is correct in noting the distinction in the FDO between GMA-compliant development regulations for state or regional EPFs on the one hand and local EPFs on the other. Nevertheless, Snohomish County, indeed CTED itself, should be aware that the Board has held consistently that the “procedural criteria are recommendations; they are advisory only, and do not impose a GMA duty or requirement on any local jurisdiction.” *Children’s v. City of Bellevue* [*Children’s I*], CPSGMHB Case No. 9503-0011, (May 17, 1995), at 12; *See also Master Builders Association v. Snohomish County*, CPSGMHB Case No. 01-3-0016, FDO, (Dec. 13, 2001), at 7.

Further, this Board has rendered decisions interpreting the provisions of RCW 36.70A.200 since

1995. These decisions have consistently distinguished between local, regional and state siting decisions. *See Hapsmith v. City of Auburn*, CPSGMHB Case No. 95-3-0075c, FDO, (May 10, 1996), at 8; *also Port of Seattle v. City of Des Moines*, CPSGMHB Case No. 97-3-0014, FDO, (Aug. 13, 1997). The Board's published decisions speak for themselves. Presumably, if Snohomish is correct in its assessment that "jurisdictions read your decisions, they read the guidelines" (Transcript, at 40), they are aware of the Board's case law cited above as well as this decision. The Board declines Snohomish County's invitation to issue what would essentially constitute an advisory opinion contrary to RCW 36.70A.209(1). Therefore, the portion of the Snohomish Motion that asks the Board to clarify is **denied**.

#### Emergency Ordinance No. 03-145:

The plain language of Ordinance No. 03-145 conveys that it was adopted in response to the

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Board's FDO. The Board also notes that Petitioner King County, rather than Respondent Snohomish County, brought to the Board's attention that the latter has undertaken this action. The Board agrees Renton's reading of RCW 36.70A.302(7)(a) that the Board retains jurisdiction over "interim controls on development affected by the order of invalidity" including, in this case, Snohomish County Ordinance No. 03-145. Therefore, all parties should be prepared to address at the compliance hearing scheduled for February 12, 2004, whether Ordinance No. 03-145 is in noncompliance with the GMA as interpreted by the FDO and, if so, whether the Board should enter a finding of invalidity. If the parties also wish to address these questions as supplementary argument in their pre-compliance hearing briefs, they may do so.

#### **IV. ORDER**

Based upon review of the Final Decision and Order, the Snohomish Motion, the King County Response, the Renton Response, the Snohomish County Reply, Snohomish County's Additional Information, the Board's Rules and the GMA, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

1. The portion of the Snohomish County Motion which asks the Board to alter the deadline for achieving compliance with the FDO is **denied**.
2. The portion of the Snohomish County Motion which asks the Board to clarify the status of the DCTED criteria in light of the FDO is **denied**.
3. The deadline for Snohomish County to take legislative action and to submit its Statement of Actions Taken to comply, and all other deadlines set forth in the FDO are **affirmed**.

4. The parties are directed to brief the question of whether, pursuant to RCW 36.70A.302(7) (a), Snohomish County Ordinance No. 03-145 complies with the FDO and the GMA and what, if any, action by the Board is appropriate.
5. If, after the compliance hearing, the Board concludes that Snohomish County remains in noncompliance with the GMA as interpreted by the Boards' orders, the Board is directed by RCW 36.70A.330 to transmit this finding to the governor. Each party may address this eventuality, and the appropriate Board action, in its briefing prior to the Compliance Hearing and/or at the Compliance Hearing on February 12, 2004.

So ORDERED this 15<sup>th</sup> day of December, 2003.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Board Member

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Joseph W. Tovar, AICP  
Board Member

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[1]

RCW 36.70A.302(7)(a) provides:

If a determination of invalidity has been made and the county or city has enacted an ordinance or resolution amending the invalidated part or parts of the plan or regulation or establishing interim controls on development affected by the order of invalidity, after a compliance hearing, the board shall modify or rescind the determination of invalidity if it determines under the standard in subsection (1) of this section that the plan or regulation, as amended or made subject to such interim controls, will no longer substantially interfere with the fulfillment of the goals of this chapter.

[2]

The relevant portions Ordinance No. 03-145 provide:

WHEREAS, the County Council adopted implementing regulations that were held invalid by the Central Puget Sound Growth Management Hearings Board in King County, et al v. Snohomish County, Case No. 0-0011, on October 13, 2003; and

...

Section 1. The County Council adopts the following findings of fact and conclusions:

...

E. In response to the Board's order, it is necessary and desirable to study and consider a range of alternatives, consistent with the County's countywide planning policies, GMA comprehensive plan, and development regulations, to be developed by the Department of Planning and Development Services (PDS), reviewed by the Snohomish County Planning Commission, and considered by the County Council

...

Ordinance No. 03-145, at 1-2.