

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

KING COUNTY,)	
)	CPSGMHB CASE NO. 03-3-0011
Petitioner,)	
)	<i>(King County I)</i>
and)	
)	
CITY OF RENTON,)	
)	
Intervenor,)	
)	
v.)	
)	
SNOHOMISH COUNTY,)	ORDER FINDING COMPLIANCE
)	
Respondent,)	
)	
and)	
)	
SNO-KING ENVIRONMENTAL)	
ALLIANCE,)	
)	
Intervenor.)	
)	
)	

I. BACKGROUND

On October 13, 2003, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued a Final Decision and Order (the **FDO**) in *King County v. Snohomish County* (**King County I**) CPSGMHB Case No. 03-3-0011. In that decision, the Board agreed with petitioner King County and Intervenor City of Renton that Snohomish County’s Ordinance No. 03-006 regulating Essential Public Facilities did not comply with the goals and requirements of the Growth Management Act and invalidated the Ordinance. The Board directed Snohomish County to achieve compliance with the Act and established a compliance schedule.

In February of 2004, among other enactments not relevant here, Snohomish County adopted Ordinance No. 04-019, which adopted new essential public facilities regulations in order to achieve compliance with the Board’s direction in the *King County I* FDO. Of significance in this pending proceeding is Ordinance No. 04-019’s adoption of a definition of “regional authority” in Snohomish County Code (**SCC**) 30.42D.010(2)(b), which provided:

A “regional authority” under this chapter means Snohomish County acting alone or jointly in combination with a public agency through an interlocal agreement approved by the legislative body of each participating agency pursuant to chapter 39.34 RCW and Snohomish County is a voting member of any legal or administrative entity created thereunder.

Following a compliance hearing, the Board issued an Order addressing the *King County I* matter. See May 26, 2004 Order Finding Continuing Noncompliance and Continuing Invalidity (**5/26/04 Order**). With respect to *King County I*, the Board found that Snohomish County’s noncompliance was not cured by Ordinance No. 04-019. The Board found that “Ordinance No. 04-019 fails to comply with RCW 36.70A.200(5) first and foremost because the Ordinance’s definition of “Regional Authority” [Sec. 3042D.010(2)(b)] artificially and impermissibly subjects certain regional EPFs (i.e. those sponsored by entities with which Snohomish County has not inter-local agreement) to preclusive criteria and process.” *Id.* at 12. Snohomish County was ordered to take further action to achieve compliance with the essential public facilities goals and requirements of the Growth Management Act.

Snohomish County subsequently filed with Thurston County Superior Court a combined appeal of the Board’s October 13, 2003 Final Decision and Order, *King County I*, and the Board’s May 26, 2004 Order Finding Continuing Noncompliance and Continuing Invalidity, *King County I*.

On May 25, 2005, the Board received from Snohomish County a copy of Thurston County Superior Court Judge Paula Casey’s “Order Denying in Part and Granting in Part Snohomish County’s Appeal of the Central Puget Sound Growth Management Hearings Board’s Decisions Invalidating Snohomish County Ordinances 03-006 and 04-019.” (**Court Order**). In relation to the definition of regional authority, the Court Order states,

Snohomish County appealed the Board’s ruling in the Compliance Order (at 12-13) that the definition of “regional authority used in EPF Ordinance II [*i.e.* 04-019], which was defined as Snohomish County or Snohomish County and another entity with which it had an interlocal agreement, was not in compliance with the Growth Management Act and invalid. The Board’s decision that this definition was unduly restrictive and inappropriate is affirmed. Snohomish County admits that a project such as King County’s Brightwater Project, which involves three counties and is a large regional project, but for which there is at present no interlocal agreement with Snohomish County, would be processed under EPF Ordinance [04-019] as a local project. This is nonsensical. The definition of regional authority cannot be limited to sponsors of those projects to which Snohomish County has voluntarily entered into an interlocal agreement with an entity. But must be defined in terms of reality. Snohomish County’s appeal of that portion of the Board’s Compliance Order is DENIED.

Court Order, at 3-4. The Court Order also remanded portions of the Board's decision which have subsequently been resolved.

On July, 29, 2005, the Board issued "Order on Court Remand of CPSGMHB Case No. 03-3-0011 [Re: Legal Issue No. 3.]. This Order set the compliance hearing for the only remaining issue in the *King County I* matter – that issue being the County's definition of "regional authority."

On November 16, 2005, the Board issued an "Order Adjusting Compliance Schedule" for the *King County I* matter, directing Snohomish County to submit a Third Statement of Actions Taken to Comply and setting March 6, 2006 for the date of the compliance hearing date.

On February 9, 2006, the Board received "Snohomish County's Third Statement of Actions Taken to Comply" (3rd SATC). In the 3rd SATC, Snohomish County asked the Board to extend the deadline for taking legislative action until March 8, 2006 in order for the County to complete its public process on the remand. 3rd SATC, at 4.

On February 10, 2006, the Board issued an "Order Extending Compliance Schedule and Establishing Fourth Compliance Hearing Date – 2006." This Order set March 8, 2006 as the legislative action deadline and March 27, 2006 as the date for the Compliance Hearing.

On February 28, 2006, the Board received "Snohomish County's Fourth Statement of Actions Taken to Comply" (4th SATC). The County indicated that on February 22, 2006, following a public hearing, it adopted Emergency Ordinance No. 06-009, a copy of which was attached. Among other things, Emergency Ordinance No. 06-009 repealed Ordinance No. 04-019, specifically Chapter 30.42D Snohomish County Code. The definition of "regional authority" was codified at 30.42D.010(2)(b), and was repealed by this action. *See* Emergency Ordinance No. 06-009, Section 4. The County asked the Board to issue a finding of compliance and strike the pending compliance hearing.

On March 10, 2006, the Board received "Snohomish County's Index to the Record on Remand" regarding the adoption of Emergency Ordinance No. 06-009.

On March 16, 2006, the Board received a timely filing entitled, "King County's and the City of Renton's Joint Response to Snohomish County's Statement of Actions Taken to Comply" (**Joint Response**). The parties to the Joint Response agreed that "the repeal of Emergency Ordinance No. 04-019 and the enactment of Emergency Ordinance No. 06-009 cures the previous noncompliance issues raised in this case." These parties also asked the Board to dismiss the case without requiring the compliance hearing. Joint Response, at 1.

The Board did not receive a response to the 4th SATC from Intervenor Sno-King Environmental Alliance.

On March 17, 2006, the Board received a letter from Snohomish County acknowledging that RCW 36.70A.330(1) and (2) require the Board to conduct a compliance hearing after the remand period has lapsed. However, the County asked that the March 27, 2006 compliance hearing be held telephonically.

On March 20, 2006, the Board arranged for the March 27, 2006 Compliance Hearing to be held telephonically.

On March 27, 2006, at approximately 10:00 a.m. the Board conducted a telephonic compliance hearing in this matter. Board members Bruce C. Laing, Edward G. McGuire and Margaret Pageler were present for the Board. John R. Moffat participated for Snohomish County. Verna Bromley participated for King County; and Corinne Hensley participated for Intervenor Sno-King Environmental Alliance. Intervenor City of Renton did not participate. The telephonic compliance hearing was recorded. The compliance hearing ended at approximately 10:15.

II. DISCUSSION

The only outstanding issue in the *King County I* matter – CPSGMHB Case No. 03-3-0011 is Snohomish County’s definition of “Regional Authority” as contained in SCC 30.42D.010(2)(b). Snohomish County’s adoption of Emergency Ordinance No. 06-009 repealed chapter 30.42D of the Snohomish County Code. *See* Emergency Ordinance No. 06-009, Section 4.¹ Consequently, the noncompliant and invalid definition of “Regional Authority” as found in SCC 30.42D.010(2)(b) has been repealed by the County. Therefore, the Board issues a **Finding of Compliance**, and rescission of invalidity; and **closes** CPSGMHB Case No. 03-3-0011, *King County I v. Snohomish County*.

III. ORDER

Having reviewed and considered the all the above-referenced documents, having considered the arguments of the parties, and having deliberated on the matter, the Board ORDERS:

- Snohomish County’s adoption of Emergency Ordinance No. 06-009, repealing Emergency Ordinance No. 04-019, complies with the provisions of the GMA as interpreted and set forth in the Board’s Orders. Therefore the Board issues a **Finding of Compliance** to Snohomish County in this matter. The Board also rescinds its prior determination of invalidity.
- CPSGMHB Case No. 03-3-0011, *King County I v. Snohomish County* is **closed**.

So ORDERED this 27th day of March, 2005.

¹ “Chapter 30.42D SCC adopted by Emergency Ordinance No. 04-019 on February 11, 2004, is repealed.”

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member