

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

1000 FRIENDS OF WASHINGTON, <i>et al.</i> ,)	
and JERRY HARLESS, <i>pro se</i> ,)	CPSGMHB Case No. 04-3-0031c
)	
Petitioners,)	<i>[1000 Friends/KCRP]</i>
)	
v.)	
)	
KITSAP COUNTY,)	
)	
Respondent, and)	ORDER ON REMAND
)	
RICHARD BJARNSON,)	
)	
Intervenor, and)	
)	
OVERTON & ASSOCIATES, <i>et al.</i> ,)	
)	
<i>Amici Curiae</i>)	
)	
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I. BACKGROUND

On June 28, 2005, the Board issued its Final Decision and Order (**FDO**) in CPSGMHB Case No. 04-3-0031c *[1000 Friends/KCRP]*. The FDO found Kitsap County Resolution No. 158-2004 compliant with the GMA requirement for “reasonable measures” but ruled that Kitsap County had failed to comply with the GMA deadline for updating its comprehensive plan. Petitioners sought judicial review of the Board’s “reasonable measures” ruling, and Kitsap County sought review of the ruling concerning update of the comprehensive plan.

The Court of Appeals, Division II, filed its decision in this matter on May 30, 2007, terminated review on August 31, 2007, and issued its mandate on September 5, 2007. The Decision of the Court affirmed in part and reversed in part the challenged provisions of the FDO.

On January 14, 2008, the Board issued a Notice of Pre-Remand Hearing Conference setting a date of February 4, 2008, for a hearing to determine the issues, if any, remaining to be decided on remand.

On January 29, 2008, the Board received a copy of “Stipulation and Order following Mandate from the Court of Appeals.” The Order stated, in relevant part:

The Growth Board’s Final Decision and Order entered on June 28, 2005, in *1000 Friends*, Case No. 04-3-0031c are hereby *affirmed in part and reversed in part*, and is hereby *remanded* to the Growth Board for further action consistent with the opinion of the Court of Appeals in Case No. 35267-2-II.

On January 25, 2008, a Stipulation Regarding Remand Order was filed on behalf of Respondent Kitsap County and Petitioners KCRP, Futurewise (1000 Friends), and Jerry Harless. The Stipulation provides, in relevant part:

3. Both Petitioners and Respondents appealed the FDO to Thurston County Superior Court. The appeals were consolidated with the existing appeals of *Bremerton v. Kitsap County*, CPSGMHB No. 04-3-0009c. (Thurston County Superior No. 04-2-02138-1, No. 05-2-01564-8, No. 05-2-01678-4). Intervenors Bjarnson and Overton were dismissed from the case. On December 22, 2005, the Court entered a Decision of the Court Following Trial held December 2, 2005. In that Decision, the Superior Court upheld the Growth Board’s decision regarding the deadline for the ten year update, but reversed the Growth Board on Kitsap County’s compliance with RCW 36.70A.215 regarding the adequacy of the reasonable measures adopted by the County.

4. Kitsap County appealed the Superior Court’s decision to the Court of Appeals. On May 30, 2007, the Court of Appeals issued an Opinion under No. 35267-2-II. The Court of Appeals upheld the Superior Court’s reversal of the Growth Board’s decision regarding RCW 36.70A.215 (reasonable measures), but reversed the Growth Board’s decision regarding the deadline for the ten year update pursuant to RCW 36.70A.130(3).

5. In the intervening time period between this Board’s FDO and the Court of Appeals’ decision, Kitsap County has completed its ten year update. In its ten year update, the County adopted additional reasonable measures that were upheld by this Board in *Suquamish Tribe, et al. v. Kitsap County*, (“*Suquamish II*”) CPSGMHB No. 07-3-0019c, Final Decision & Order (August 15, 2007) and Order on Reconsideration (September 13, 2007). The *Suquamish II* Petitioners have filed an appeal of the Growth Board’s decision in Thurston County Superior Court but have not assigned error to the Growth Board’s decision regarding reasonable measures.

6. The issue of whether Kitsap County has complied with RCW 36.70A.130(3) is moot as the County completed the update in December 2006. The next ten year update will be due in 2016.

7. The issue of whether Kitsap County has adopted adequate reasonable measures is also moot, as the Growth Board ruled that Kitsap County is in compliance with RCW 36.70A.215 and that ruling has not been appealed.

II. DISCUSSION and ORDER

The Board issued its FDO in this matter on June 28, 2005. Two issues in the case – “reasonable measures” and the deadline for the County’s ten-year comprehensive plan update – were appealed. No stay was entered during the pendency of the appeal.

Reasonable Measures. The FDO found that the County’s reasonable measures adopted in Resolution 158-2004 complied with RCW 36.70A.215. The superior court reversed, and its decision was upheld by the Court of Appeals. *Kitsap County v. Central Puget Sound Growth Management Hearings Board (Kitsap)*, 138 Wn. App. 863, 875-877, 158 P.3d 638 (2007), clarified on denial of reconsideration (July, 2007).

However, while the matter was pending, the County adopted additional reasonable measures, which were challenged and upheld by the Board under the standard articulated by the superior court. *Suquamish Tribe, et al. v. Kitsap County (Suquamish II)*, CPSGMHB No. 07-3-0019c, Final Decision and Order (Aug. 15, 2007) and Order on Reconsideration (Sept. 13, 2007). The non-compliance of the measures adopted in Resolution 158-2004 is therefore **moot**.

Ten-year Update Deadline. In the FDO the Board ruled that the County’s ten-year update was due December 1, 2004, and issued a finding of non-compliance. The superior court affirmed, and the Court of Appeals reversed, holding that the ten-year review is calculated from the date the UGA was first designated as compliant. *Kitsap*, 138 Wn. App. At 877-880.

In the intervening time between the FDO and the Court of Appeals decision, Kitsap County completed its ten-year update, and on February 2, 2007, the Board issued its Finding of Compliance [Re: Failure to Act on Kitsap County 10-Year Comprehensive Plan Update]. Although the Board’s finding of non-compliance concerning the ten-year update deadline was based on a mistake of law in the application of RCW 36.70A.130, the matter is now **moot**.

Upon review of the record, the decisions of the trial court and the Court of Appeals, and the stipulations of the parties, the Board determines that there are no further questions of compliance in this case. Therefore the Board ORDERS:

- The Pre-remand Hearing Conference scheduled for February 4, 2008, is **cancelled**.

- Petitioners' legal issues concerning reasonable measures and the ten-year review deadline are **dismissed as moot**.
- The matter of *1000 Friends/KCRP v. Kitsap County*, CPSGMHB Case No. 04-3-0009c is **closed**.

So ORDERED this 30th day of January, 2008.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member