

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

SUQUAMISH TRIBE, KITSAP CITIZENS	)	
FOR RESPONSIBLE PLANNING AND	)	<b>Case No. 07-3-0019c</b>
JERRY HARLESS,	)	
	)	<i>(Suquamish II)</i>
Petitioners,	)	
	)	
v.	)	
	)	
KITSAP COUNTY,	)	<b>ORDER ON MOTION</b>
	)	<b>FOR RECONSIDERATION</b>
Respondent.	)	
	)	

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**I. PROCEDURAL HISTORY**

On June 5, 2008, the Central Puget Sound Growth Management Hearings Board (the **Board**) issued its “Order Finding Compliance” in the above captioned matter.

On June 12, 2008, the Board received “Petitioner Harless’ Request for Reconsideration of Order Finding Compliance” (**Harless Motion**) filed pursuant to WAC 242-02-832(2)(a).<sup>1</sup> The Harless Motion was timely filed.

On June 17, 2008, the Board received “Kitsap County’s Response to Petitioner Harless’ Motion for Reconsideration of Order Finding Compliance” (**Kitsap Answer**). The Kitsap Answer was timely filed.

**II. MOTION FOR RECONSIDERATION**

A motion for reconsideration must be based on alleged material errors of procedure, misinterpretation of fact, misinterpretation of law; an irregularity that occurred at the hearing preventing a fair hearing; or clerical mistakes in the final decision. WAC 242-02-832(2)(a)-(c). With the motion presented, the Petitioner appears to allege a misinterpretation of fact and a misinterpretation of law pertaining to the timelines for ensuring that sanitary sewer service is available within UGAs.

Petitioner Harless alleges,

The error inherent in the Order Finding Compliance is that, regardless of whether the 20-year planning period for that 1998 plan ends in 2012 (as it was enacted at

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<sup>1</sup> Pursuant to WAC 242-02-832(1), any party may file a Motion for Reconsideration within 10 days of service of the Board’s final decision.

the time) or 2018 (as adjusted by the Court of Appeals), **100% of the growth accommodated by that plan in UGAs was and remains projected to occur no later than 2012.** [Alleged Error of Law.] The 2008 Comprehensive Plan retains the identical 2012 population projection from the 1998 Comprehensive Plan and builds upon that for subsequent years. [Alleged Error of Fact.] Growth the County projects to occur subsequent to 2012 has been planned for by expanding UGAs, first in 2003 and again in 2008. Thus the Board's Order will allow the County to delay provision of urban services for up to six years **after** the planned urban development is available for occupancy.

Harless Motion, at 4; (emphasis in original); [bracketed language supplied].

The County responds,

No material facts are shown to be in error, and the alleged "misinterpretation of law" is nothing more than Petitioner's disagreement with the Board's analysis. Petitioner states "the unresolved error concerns the 20 year planning period for the original UGAs."<sup>2</sup> This issue is neither "unresolved" nor "error." The Board squarely addressed this issue in its Order:

Petitioners contend that 2012 is the end of the 20-year planning horizon since the UGAs were initially designated in the 1996 [sic] Plans.

This assertion is without merit for two reasons. First, as the County correctly notes, the County's Comprehensive Plan was found compliant in 1998; therefore the 20-year planning for this area ends in 2018, not 2012 as asserted by Petitioners. See also *Kitsap Citizens for Responsible Planning v. Kitsap County* (KCRP VI), CPSGMHB Case No. 06-3-0007, Order Finding Compliance (Nov. 5, 2007) and *Kitsap County v. CPSGMHB*, 138 Wn. App. 863, 879-880, 158 P.3d 638 (2007).<sup>3</sup>

Kitsap Answer, at 4.

The County also noted, "The Board and the Courts sometimes have a difficult task in reconciling the various provisions of the GMA, including various amendments that changed deadlines and planning timeframes." *Id.* at 5.

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<sup>2</sup> Citing Harless Motion, at 3.

<sup>3</sup> *Suquamish II*, 07-3-0019c, Order Finding Compliance, (Jun. 5, 2008), at 12.

## BOARD DISCUSSION

### Alleged Error of Fact:

Petitioner Harless claims that the “2008 [*sic* 2006] Comprehensive Plan retains the identical population projections from the 1998 Comprehensive Plan and builds upon that for subsequent years.” Harless Motion, at 4. However, Petitioner fails to provide references to the 1998 Plan or identify where inconsistencies in the 2006 Plan occur. Nonetheless, due to the potential significance of this claim, the Board reviewed the population forecasts and timeframes used in the County’s recent 2006 Comprehensive Plan as well as the Central Kitsap Wastewater GMA Compliance Plan (**CKW Plan**), City of Bremerton Sewer UGA Planning (**Bremerton Sewer Plan**), City of Port Orchard Comprehensive Sanitary Sewer Plan Update (**Port Orchard Sewer Plan**), and the Karcher Creek Sewer District 2007 Comprehensive Sewer Plan (**Sewer District Plan**).

The Board finds that:

- 1) the population projections used by the County in its 2006 Plan, specifically the Land Use Element, are based upon the Office of Financial Management’s (OFM) intermediate range population forecast for 2025;<sup>4</sup>
- 2) the allocated population growth targets for each of the County’s UGAs are based upon a 2025 population target;<sup>5</sup>
- 3) the population growth assumption used by the County for its capital facility planning was based upon 2012 population growth projections.<sup>6</sup>
- 4) the population allocations used in the Capital Facility Element, specifically sewer system planning, reflects 2025 projections.<sup>7</sup>

Comparing these original 2006 Plan provisions illustrates a possible inconsistent use of the planning timeframes – 2025 and 2012 – at least in the Executive Summary of the CFE.

However, on remand, Kitsap County, in conjunction with the relevant service providers, revised and amended its Capital Facilities Element and Appendix A.<sup>8</sup> After reviewing the amended Capital Facilities Element and amended Appendix A the Board finds that the capital facilities planning timeframes are now tied to 2025 and are consistent between the Land Use and Capital Facilities Elements.<sup>9</sup> Therefore, the Board concludes that any prior discrepancies between the population forecast timeframes have been corrected on remand. **The Board finds and concludes it made no factual error in its decision.**

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<sup>4</sup> See 2006 Comprehensive Plan, Land Use Element, Policy LU-1, at 2-7.

<sup>5</sup> *Id.* Table 2-1, at 2-8.

<sup>6</sup> See Capital Facilities Element, Executive Summary, Tables ES-1 and ES-2, at ES-2.

<sup>7</sup> *Id.* CFE, Table SS.2, at 65.

<sup>8</sup> See Ordinance No. 409-2008, Sections 2, 3, 4, 5, and 6.

<sup>9</sup> See CKW Plan, at 22 and 29; Bremerton Sewer Plan, at 21; Port Orchard Sewer Plan, at 12-13; and Sewer District Plan, at 3-4.

Alleged Error of Law:

The Board's Order Finding Compliance stated:

[T]he County's Comprehensive Plan was found compliant in 1998; therefore the 20-year planning for this area ends in 2018, not 2012 as asserted by Petitioners. See also *Kitsap Citizens for Responsible Planning v. Kitsap County (KCRP VI)*, CPSGMHB Case No. 06-3-0007, Order Finding Compliance (Nov. 5, 2007) and *Kitsap County v. CPSGMHB*, 138 Wn. App. 863, 879-880, 158 P.3d 638 (2007).

*Suquamish II*, 07-3-0019c, Order Finding Compliance, (Jun. 5, 2008), at 12.

In the Court of Appeals case, *Kitsap County v. CPSGMHB (Kitsap)*, 138 Wn. App. 863, 158 P. 3d 638 (2007), the Court stated:

The issue here is from what date the 10-year UGA review begins. RCW 36.70A.130(3) does not specify a date.

*Kitsap*, at 877.

The Court of Appeals concluded that the UGA "review would begin 10 years after the [UGA] **designation** which would be 2008, not 2004." *Id.* at 879 (emphasis supplied). The Court noted that the timelines established by the Legislature did not require the UGA and Comprehensive Plan Update reviews to occur at the same time.<sup>10</sup> *Id.* Consequently, the *Kitsap* case only establishes the beginning date for determining the deadline for the GMA required 10-year UGA review. It does not speak to the 20-year planning horizon. Therefore, **the Board was in error in referencing to the *Kitsap* case as addressing the 20-year planning horizon.**

However, common sense dictates, and the Board is convinced, that to give meaning to the GMA planning horizon requirements [RCW 36.70A.110(2) and .130(3)(b)], guidance for computing the 20-year planning period must be provided.<sup>11</sup> Therefore, based upon the rationale used by the Court of Appeals<sup>12</sup> in the *Kitsap* case, and this Board's prior holding in *Kitsap VI*, CPSGMHB Case No. 06-3-0007, Order Finding Compliance, (Nov. 5, 2007), **the Board holds that for purposes of ensuring adequate and available urban services within a designated unincorporated UGA, the 20-year planning period begins in the year a compliant UGA designation is adopted by the County.**

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<sup>10</sup> The Court observed that the 10-year UGA review and the 7-year Comprehensive Plan Update review would only coincide every 70 years. *Kitsap*, at 879.

<sup>11</sup> Since the Harless Motion goes to compliance with the GMA's UGA requirements, which was at issue in the Board's prior decisions, the Board does not view this order as an Advisory Opinion. See *Kitsap*, at 880-881.

<sup>12</sup> The Board notes that the Court of Appeals was construing RCW 36.70A.130(3)(a) and here the Board is construing RCW 36.70A.130(3)(b). Consequently, the Board's rationale for the 20-year planning period is consistent with the rationale used by the Court.

As applied to Kitsap County, the succeeding 20-year period for those UGAs designated and found compliant in the 1998 Comprehensive Plan extends until 2018. Any subsequent designated UGA expansions establish a new succeeding 20-year period which the County must track. In relation to the five UGA expansions involved in the present case, the succeeding 20-year period extends until 2026 – 20-years after the five UGA expansion designations were adopted. The Board notes that although the recent five UGA expansions were found noncompliant and invalid, they were not modified on remand in 2008. Instead the County made provision for the necessary sanitary sewer services, and the original 2006 UGA designation date starts the 20-year clock. This is different from the situation in the 1998 Plan where prior UGA designations from 1996 had been found noncompliant and invalid, but were eventually revised and modified with *new UGA designations* and found to comply in 1998; thus triggering the subsequent 20-year time period. **Therefore, the Board did not err pertaining to the timelines for ensuring that sanitary sewer service is available within the County’s designated UGAs.**

The Board acknowledges that there may well be a time lag between the OFM *20-year population forecast year* [i.e. 2025] and the *year ending the 20-year planning period* [i.e. 2026]. This is a natural consequence of the nature of GMA planning. The OFM population forecasts *start* the GMA planning process, especially the designation and review of UGAs. These projections are prepared for each county which must then, in cooperation with its cities, allocate population growth among its cities, unincorporated UGAs and rural area. This inevitably takes time. Once the population allocations are determined each jurisdiction must embark upon the review process to accommodate the new growth. This process also takes time. Consequently, it is not uncommon or unreasonable to have the revised UGAs adopted a year *after* OFM releases the 20-year population projections. Therefore, the year of the OFM 20-year population forecast and the 20-year period following the adoption and designation of UGAs may not coincide – there may be a delay. Nonetheless the Board concludes that commencing the 20-year planning period at the designation and adoption of UGAs is a reasonable and practical interpretation of the GMA’s 20-year planning horizon requirements – RCW 36.70A.110(2) and .130(3)(b).

### **III. ORDER**

Having reviewed the June 5, 2008 Order Finding Compliance, Harless’ Motion, Kitsap’s Answer, the relevant exhibits, case law, the relevant provisions of the GMA and the Board’s Rules of Practice and Procedure, the Board affirms its previous factual conclusions and modifies its legal conclusions as set forth *supra*. Consequently, Petitioner Harless’ Motion is **DENIED** in part and **GRANTED** in part.

1. The Board’s June 5, 2008 Order Finding Compliance in the matter of *Suquamish II v. Kitsap County*, CPSGMHB 07-3-0019c is **Supplemented** and **Modified** as set forth *supra*.

So ORDERED this 30<sup>th</sup> day of June, 2008.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire  
Board Member

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David O. Earling  
Board Member

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Margaret A Pageler  
Board Member

Note: This order constitutes a final order as specified at WAC 242-02-832(4). Orders on Reconsideration are not subject to additional motions for reconsideration. WAC 242-02-832(3).