

AN ORDINANCE IMPOSING A 180-DAY MORATORIUM ON THE ACCEPTANCE OF NEW APPLICATIONS FOR DEVELOPMENT UTILIZING THE RURAL WOODED INCENTIVE PROGRAM AND DECLARING AN EMERGENCY

WHEREAS, the Growth Management Act (GMA) requires Kitsap County to comprehensively plan for growth under Chapter 36.70A RCW; and

WHEREAS, RCW 36.70A.070(5)(a) provides that counties may consider local circumstances in planning for rural areas; RCW 36.70A.070(5)(b) provides that counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities consistent with rural character; and RCW 36.70A.090 provides that counties may employ innovative land use management techniques in their comprehensive plans, including density bonuses, cluster housing and transfers of development rights; and

WHEREAS, in December 2006, Kitsap County adopted such an innovative program in a Rural Wooded Incentive Program (RWIP), codified at Kitsap County Code Chapter 17.301; and

WHEREAS, the RWIP was appealed to the Central Puget Sound Growth Management Hearings Board and a decision rendered on August 15, 2007 in *Suquamish II v. Kitsap County*, CPSGMHB Case No. 047-3-0019c, Final Decision and Order (August 15, 2007). In part, the RWIP was found to be noncompliant and invalid. The CPSGMHB remanded the RWIP back to the County and ordered Kitsap County to take legislative action to comply with the Order by February 11, 2008 and requiring a compliance report to be submitted no later than February 21, 2008; and

WHEREAS, the Kitsap County Board of Commissioners desires to bring the RWIP (as well as its comprehensive plan and other development regulations) into compliance with the GMA and have the order of invalidity removed as soon as possible; but, after hearing from the public, the Board has some concerns over other portions of the RWIP program;

WHEREAS, The Board desires to take additional time to evaluate other issues that were not addressed by the CPSGMHB, but may require additional changes to the RWIP; and

WHEREAS, the Board finds that it needs additional time to address these other issues, but also desires to obtain an order from the CPSGMHB reversing the invalidity order; and the Board wants to address the additional issues before any projects utilizing the RWIP program vest to the existing program; and

WHEREAS, Kitsap County is authorized by RCW 36.70.795 and RCW 36.70A.390 to impose a moratorium.

BE IT ORDAINED:

Section 1. Preliminary Findings. The recitals set forth above are hereby adopted as the Kitsap County Board of Commissioner's findings in support of the moratorium imposed by this ordinance. The Board of Commissioners may, in its discretion, adopt additional findings at the conclusion of the public hearing referenced in Section 4. In addition, the Board makes the following findings of fact:

- A. As part of the Kitsap County ten year update to its comprehensive plan (pursuant to RCW 36.70A.130(3)), Kitsap County adopted development regulations to establish a rural wooded incentive program, codified at KCC Chapter 17.301. The adoption of the RWIP culminated approximately 16 years of work on developing such a program for the areas in Kitsap County currently designated Rural Wooded (RW).
- B. Chapter 17.301 KCC was appealed to the Central Puget Sound Growth Management Hearings Board (CPSGMHB) in *Suquamish Tribe v. Kitsap County*, CPSGMHB No. 07-3-0019c ("*Suquamish II*").
- C. On August 15, 2007, the CPSGMHB issued a final decision and order (Order) in the *Suquamish II* case, in which it held certain provisions of the RWIP were not in compliance with the GMA and invalid pursuant to RCW 36.70A.300. Specifically, the CPSGMHB found the following problems: (1) an ambiguous provision concerning future development of wooded reserve areas at the end of forty years in KCC 17.301.080.F.1; (2) a requirement that a disclosure statement be placed on the title of a final plat using the program stating that part of the property may be used for forestry operations in KCC 17.301.080.E.12; and (3) the lack of a discrete document harmonizing the GMA goals in RCW 36.70A. 020 and the actions taken by the Board in adopting the RWIP.
- D. In response to the CPSGMHB Order, Kitsap County proposed to amend the RWIP as follows: (1) eliminate all options under the RWIP and allow only a bonus density if 75% of the property is placed in permanent open space (thus eliminating the provision regarding uses of the wooded reserve after 40-years); (2) eliminate the requirement for a disclosure statement/notice to title; (3) further limit the uses allowed in the open space; (4) require public ownership of the open space portion of the property; and (5) ensure the preparation of a discrete document harmonizing the GMA goals with the program.
- E. On February 11, 2008, the Board held a public hearing on the proposed revisions and received a large amount of public input on the ordinance. The public interest and response to the proposed changes was far more extensive than the Board had predicted, and many astute and perceptive ideas were put forward by the public.
- F. Because the County is under an Order of invalidity and noncompliance with the GMA with respect to the RWIP program, and because the proposed changes also included changes to another program, the Transfer of Development Rights (TDR) program, it is in the County's best interest to adopt changes to those programs and

to come into compliance as soon as possible. Thus, the Ordinance adopted on February 13, 2008 (Kitsap County Ordinance No. 407-2008) directly addresses the Order, but there remain additional issues that the Board would like to consider through additional public process.

- G. As a result of the public comment, the Board would like to further evaluate other provisions of the RWIP, but does not want to repeal the program as it reflects a significant amount of input and work over the years by both the County and the stakeholders.
- H. Issues that the Board would like to consider include, but are not limited to: (1) management plans for privately owned permanent open space tracts, which also address forestry activities; (2) increased minimum project size to ensure public and environmental benefits; (3) increased maximum project size to increase potential flexibility in project development; (4) connectivity of open space and trails; (5) additional protections for critical areas; (6) a requirement for the use of low impact development techniques; and (7) mechanisms to address the perpetual nature of the open space.
- I. The Board would like to take additional time to develop responses to the public input and address concerns regarding the issues set forth above, but would also want to come into compliance with the CPSGMHB's Order.
- J. In order to meet the CPSGMHB's order, it is necessary to adopt a new version of the RWIP, but in order to prevent the vesting of applications under that version, the Board finds it is necessary and in the public interest to immediately prohibit applications under the program until such time as the other issues are thoroughly evaluated.
- K. The Board hereby finds that an emergency exists and there is a need to immediately adopt a moratorium with respect to the RWIP to prevent applications from vesting in the interim time.

Section 2. Moratorium. A moratorium is hereby imposed upon the acceptance of any new applications for permits proposing to utilize the Rural Wooded Incentive Program (RWIP) under Chapter 17.301 Kitsap County Code.

Section 3. Effective Period for the Moratorium. The Kitsap County Board of County Commissioners hereby finds and declares that an emergency exists which necessitates that this ordinance become effective immediately in order to preserve public welfare and to prevent the potential for development under the RWIP. Accordingly, the moratorium set forth in this ordinance shall be in effect immediately and shall expire in 180 days (August 12, 2008), unless terminated sooner by the Kitsap County Board of County Commissioners.

Section 4. Public Hearing. Pursuant to RCW 36.70.795 and RCW 36.70A.390, the Kitsap County Board of Commissioners will set a public hearing within sixty days from the date this Ordinance is passed.

Section 5. Declaration of Emergency. The Kitsap County Board of Commissioners hereby declares for the public interest, safety and welfare reasons set forth above, that an emergency exists necessitating that this ordinance take effect immediately upon its passage.

Section 6. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of any other section, sentence, clause or phrase of this ordinance.

DATED this 13th day of February, 2008.

**BOARD OF COUNTY COMMISSIONERS
KITSAP COUNTY, WASHINGTON**



ATTEST:

Opal Robertson
Opal Robertson
Clerk of the Board

Steve Bauer
STEVE BAUER, Chair

J. W. Brown
JOSH BROWN, Commissioner

NOT PRESENT
JAN ANGEL, Commissioner

Approved as to form:

Shelley E. Kneip
Deputy Prosecuting Attorney