





1           **A. The County's Reliance on a Pre-Existing Regulation is Not New Information**  
2           **Justifying Rescission of the Invalidation Order**

3           The County draws the Board's attention to the requirement in the new comprehensive plan and  
4           development regulations for all new developments to "provide an urban level of sanitary sewer service,"<sup>3</sup>  
5           as though this were new information not considered by the Board in its Orders.<sup>4</sup> But the Board was  
6           cognizant of this regulatory provision throughout its deliberations. Petitioners mentioned it in their  
7           Opening Brief, pointing out that a requirement to connect to sewers without a valid plan to provide those  
8           sewers is a de facto moratorium on development.<sup>5</sup> The limitations in this regulation remain and its  
9           existence does not justify lifting Invalidation.

10           **B. The Focus is on New Subdivisions, not Applications to Build Homes on Existing**  
11           **Lots**

12           The County's motion glosses over that the Invalidation Order does not impact applications to build  
13           single family homes on existing lots. RCW 36.70A.302 (3)(b)(i). The owner of a single family lot can  
14           vest a building permit application, regardless whether the parcel is next to or far from a sewer line.

15           Thus, the focus and primary impact of the Invalidation Order is on applications to subdivide larger  
16           parcels into single family lots (or, potentially, multi-family developments).

17           **C. Footnote 48 Does Not Limit Vesting**

18           The County contends that the protection afforded by the Invalidation Order is unnecessary because  
19           Footnote 48 addresses the issue already. Footnote 48 provides:

20                   Within urban growth areas, all new residential subdivisions, single-  
21                   family or multi-family developments are required to provide an urban  
22                   level of sanitary sewer service for all proposed dwelling units.

24           <sup>3</sup> KCC 17.381.050 (48).

25           <sup>4</sup> County Request at 4-5.

26           <sup>5</sup> Petitioners' Opening Brief at 40-41.

1 The first flaw in the County's claim is that this regulation does not preclude vesting of  
2 subdivision applications. In the absence of the Order of Invalidity, an owner of a large (or small) tract in  
3 the expanded UGA could apply to subdivide the parcel consistent with the urban densities allowed in the  
4 UGA. Upon filing the application, the subdivision would be vested. The issue of whether sewer service  
5 could be provided would be addressed later. The vesting damage would be done.

6 **D. Footnote 48 Allows Development that would Cause Substantial Interference with**  
7 **the Act's Goals**

8 Footnote 48 allows additional subdivisions in the expanded UGAs if sanitary sewer service can  
9 be provided. The County claims that new subdivisions in areas that may revert to Rural will not interfere  
10 with the Act's goals as long as those subdivisions have sewer service. This argument suffers from several  
11 flaws.

12 1. **Footnote 48 Allows New Subdivisions Even if the Land is Not Currently Served**  
13 **by an Existing Sewer Line**

14 The County suggests that an application for a new subdivision in the expanded UGAs will be  
15 approved only if the property is served by an existing sewer line and, therefore, no substantial interference  
16 with the Act's goals will occur. But that is not what Footnote 48 says. It does not require that the  
17 property be served by an existing line. The developer could propose to extend a line from elsewhere. Or  
18 the developer could propose to develop a package sewer plant. Thus, Footnote 48 does not preclude new  
19 subdivisions from vesting in the expanded UGA even though they are not served by an existing sewer  
20 line.

21 The County acknowledges that the requirements of Footnote 48 can be satisfied in two ways: by  
22 connecting to an existing sewer line OR by developing new urban sewer infrastructure: "[T]he  
23 County adopted a new regulation that requires new urban developments to provide urban levels  
24 of sanitary sewer, thereby prohibiting new development that cannot hook up to a sewer line or

1 provide for alternative urban sewer service.”<sup>6</sup> Thus, owners of large tracts that can afford to extend  
2 sewer lines or build package plants will be able to satisfy the regulation, even though no sewer line  
3 currently serves the property. The regulation does not protect against new subdivisions in far-flung areas  
4 on the edge of the UGA. Only an Order of Invalidation provides that protection.

5 In effect, while Footnote 48 may serve to preclude small subdivisions (that cannot finance their  
6 own sewer extension or package plant), the regulation will leave the door open for those developments of  
7 sufficient scale to fund their own sewer infrastructure. In other words, the regulation leaves the door open  
8 for the larger projects which hold the greatest prospect for undermining the Act’s goals if these areas are  
9 later excluded from the UGA.

10 This is a plan for the very leapfrog development pattern that the Board rejected in *KCRP VI*.<sup>7</sup>  
11 Implementing this regulation does nothing to get sewers to small infill developments and existing homes  
12 and businesses that are in the UGA expansion areas, but are not served or close to existing sewer lines.  
13 The regulation only serves to promote more of the haphazard development that already blankets much of  
14 Kitsap County and does not address the thorny issues that have been left in the wake of that wasteful and  
15 environmentally destructive development pattern. Such an exclusionary scheme also raises serious  
16 questions of equity as large developers enjoy the prospect of buying their way out, while small  
17 landowners can only stand by and watch, hoping (as we do) that some day the County will adopt and  
18 implement a fiscally responsible sewer plan.

19 Worse yet, if the County responds to the pleas of smaller landowners by extending sewer lines to  
20 reach their property, the interference with the Act’s goal only widens. Perhaps a nearby line can be  
21 extended to reach the parcel, but the best use of the County’s limited funding for sewer improvements  
22 might call for those funds to be spent elsewhere, closer to the urban cores. Yet confronted with a vested  
23 subdivision application, the County may feel constrained to fund sewers to this parcel on the edge of the  
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26 <sup>6</sup> County Request at 5 (emphasis supplied).

<sup>7</sup> *KCRP VI*, CPSGMHB Case No. 06-3-0007 (FDO at 30).

1 urban growth area instead of applying the funding more efficiently and urgently to deal with unsewered  
2 areas closer in.

3 In sum, contrary to the County's suggestion, Footnote 48 does not preclude new subdivisions in  
4 areas not currently adjacent to a sewer line. Footnote 48 does not avoid the substantial interference with  
5 the Act's goals.

6 2. Even New Subdivisions of Parcels Served by Existing Sewer Lines Can  
7 Substantially Interfere with the Act's Goals.

8 Even if a parcel already has sewer right to the property line, allowing that parcel to sub-divide  
9 now can substantially interfere with the Act's goals. All lots adjacent to sewer lines in the expanded  
10 UGAs will not necessarily be included in the UGAs after a new sewer plan is devised. The County itself  
11 acknowledges that not all areas with sewer lines have been included in UGAs in the past.<sup>8</sup> That may  
12 occur again when a fiscally constrained sewer plan is finally developed. The UGA may then be re-drawn  
13 to place some areas with nearby sewer in a rural designation. Allowing vesting of additional subdivisions  
14 on the fringe of the expanded UGA will create just the kind of leap-frog development that the Act seeks  
15 to avoid.

16 If the forthcoming sewer plan excludes these areas from its fiscally-constrained reach and the  
17 UGA is correspondingly retracted, vested subdivision applications in this area will undermine efforts to  
18 protect rural values, even if the plat happens to have a sewer connection. Urban density subdivisions do  
19 not belong in rural areas, whether they happen to have sewer access or not. Allowing more such  
20 subdivisions to vest before the UGA expansion areas are reconsidered in light of the forthcoming sewer  
21 plan will cause substantial interference with the Act's goals to promote compact urban areas and preserve  
22 rural areas. Such projects will sap the efforts of the County (and some developers) to encourage denser  
23 development closer to urban cores.

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26 <sup>8</sup> County Request at 7.

1 This Board recognized the problems associated with allowing additional development at the  
2 fringe of urban areas (and worse yet, in rural areas) in lieu of promoting in-fill development in existing  
3 urban areas. Policies (and vesting, we would add) that allow development at the fringe are "a recipe for  
4 the kind of leap-frog development that the Legislature hoped to forestall when it enacted the GMA."<sup>9</sup>

5 While deferring the capital facilities needed to support buildout of the  
6 existing UGA at urban densities, Kitsap County has expanded the UGA  
7 to incorporate a large subdivision.... [B]ut without infill in the *existing*  
8 UGA, sprawl is perpetuated, contrary to Goal (2), and the provision of  
9 urban services becomes inefficient and more costly, contrary to Goals (1)  
10 and (12).

11 *Id.*

12 Lifting the Order of Invalidity to allow new subdivisions to vest in the UGA expansion areas will  
13 perpetuate this recipe for leapfrog development which the Board found to interfere with Goals 1 and 2.  
14 For instance, on the west side of Dyes Inlet, there is a sewer line that extends west, across SR 3, to serve a  
15 subdivision in an area generally characterized by rural lot sizes, aesthetics, and uses. It could well be that  
16 a fiscally constrained sewer plan would exclude this area from any further sewer development. The UGA  
17 in that area would then shrink to protect the rural values that still exist in this area, despite a single sewer  
18 line currently serving a single subdivision there. Lifting the Order of Invalidity in that area now would  
19 allow new plats to vest in an area that may well be excluded from the UGA, killing efforts to preserve  
20 rural areas on the fringe of Kitsap County's sprawling urban areas. While the single, existing plat in that  
21 area would be viewed as an anomaly if the area is re-designated as rural, multiple new plats in that area  
22 due to additional vesting could be the death knell for protecting the rural values that still exist in that area.

23 3. Footnote 48 Does not Protect Against Other Mechanisms by which New  
24 Subdivisions on the Fringe Interfere with the Act's Goals

25 Lifting the invalidity determination now will undermine another prudent strategy suggested to the  
26 County by the Board. In the FDO, the Board noted that the County may decide to increase urban

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<sup>9</sup> *KCRP VI*, CPSGMHB Case No. 06-3-0007 (FDO at 30).

1 densities to leverage economies of scale in the provision of sewer facilities<sup>10</sup>. The County's ability to  
2 adopt this sensible approach will be thwarted if Invalidity is lifted and new developments vest at the low  
3 (4 du/acre) density permitted under the current (invalidated) plan.

4 As the County acknowledges, the parties are negotiating to identify areas that likely will be included  
5 in a UGA even after a new sewer plan is developed so that those areas can be removed from the scope of  
6 the Order of Invalidity. The Board should await the end of those efforts before lifting the Order of  
7 Invalidity.

8 **E. Allowing Development to Occur Within 500 Feet of Sewer Lines**  
9 **Substantially Interferes with GMA**

10 As an alternative to rescinding the invalidity order based on Footnote 48, the County proposes an  
11 exception to lift invalidity as to any lands in the UGA expansion areas within 500 feet of preexisting  
12 sewer lines.<sup>11</sup> This proposal should be rejected for two reasons. First, the County has not amended its  
13 comprehensive plan or development regulations to retract the UGA expansions or taken any other  
14 legislative action to implement this vaguely-stated sewer proximity scenario. Thus, the County invites  
15 the Board to issue an advisory opinion in direct contradiction of RCW 36.70A.290 (1); WAC 242-02-  
16 830(2):

17  
18 The board will not issue advisory opinions on issues not presented to the  
19 board in the petition for review's statement of the issues, as modified by  
20 any prehearing order.

21 Second, the modification suggested by the County will still allow vesting of projects, although  
22 fewer of them, which will result in the same substantial interference with the Goals of the GMA described  
23 *supra*. A large parcel, one corner of which lies within 500 feet of an existing sewer line could vest a  
24 large, low-density subdivision, much of it more than 500 feet from the sewer line, leapfrogging

25 <sup>10</sup> FDO at 26.

26 <sup>11</sup> County Request at 6-9.

1 unsewered areas of existing homes. This is not a hypothetical concern. The maps provided by the  
2 County in support of its motion depict such situations in several instances. We have highlighted those on  
3 the maps attached hereto.

4 Even more problematic, the arbitrary 500 foot parameter suggested by the County is not a  
5 reasonable proxy for actual sewer availability. A specific example of the type of leap-frog development  
6 the Board rejected in *KCRP VI* is provided in the Silverdale UGA near the Eldorado Hills development  
7 area.<sup>12</sup> Here, a number of large undeveloped parcels are located to the west and southwest that are within  
8 500 feet of a sewer line. This is the recipe for the kind of leap-frog development that the Legislature  
9 hoped to forestall when it enacted the GMA. This sewer line was obviously constructed to serve the  
10 existing subdivision. The County has provided no information as to the capacity of that sewer line to  
11 receive effluent from additional subdivisions on adjacent large parcels. Potentially, these parcels could  
12 vest, but still have insufficient sewer capacity using the existing line which is the source of the 500 foot  
13 buffer.

14 While the blanket 500 foot buffer exemption suggested by the County substantially interferes  
15 with the Goals of the GMA, Petitioners recognize that there may be some limited built-out areas within  
16 the UGA expansions where sanitary sewers exist and for which the Order of Invalidity may not be  
17 necessary to safeguard the Goals of the Act. The County, however, has not identified these areas. It is  
18 likely that Petitioners would not object if the County adopts interim regulations and proposes lifting the  
19 Order of Invalidity only for certain limited areas. Indeed, we are currently working on a proposal to that  
20 effect and the parties are hopeful that we can present that to the Hearings Board shortly.  
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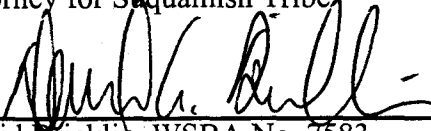
<sup>12</sup> See County Response, Ex. B, Central Kitsap.

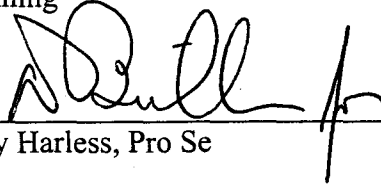
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2 **III. CONCLUSION**

3 For all the reasons above, the Board should deny the County's requests for clarification,  
4 modification or recession of and the Order of Invalidity issued in the Board's September 13, 2007 Order  
5 on Motion for Reconsideration.

6 Respectfully submitted this 17 day of, October 2007.

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12 Attorney for Suquamish Tribe

13 By:   
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BEFORE THE  
CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD

SUQUAMISH TRIBE, KITSAP  
CITIZENS FOR RESPONSIBLE  
PLANNING, and JERRY HARLESS,

Petitioners,

and

PORT GAMBLE S'KLALLAM  
TRIBE,

Intervenor,

v.

KITSAP COUNTY,

Respondent.

NO. 07-3-0019c  
*(Suquamish II)*

DECLARATION OF SERVICE

STATE OF WASHINGTON        )  
  )        ss.  
COUNTY OF KING            )

I, KATHLEEN M. MILLER, under penalty of perjury under the laws of the State  
of Washington, declare as follows:

**Bricklin Newman Dold, LLP**  
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1 I am the legal assistant for Bricklin Newman Dold, LLP, attorneys for Kitsap  
2 Citizens for Responsible Planning herein. On March 22, 2007, and in the manner indicated  
3 below, I caused Petitioners' Harless, Suquamish Tribe, and KCRP Response to Kitsap  
4 County's Request for Clarification, Modification or Rescission of the Orders of Invalidity to  
5 be served on:  
6

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DATED this 18<sup>th</sup> day of October, 2007, at Seattle, Washington.

  
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KATHLEEN M. MILLER

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