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SHORELINE CITY ATTORNEY

BEFORE THE CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

CITY of SHORELINE, TOWN of
WOODWAY, and SAVE RICHMOND
BEACH, et al.,

CASE NO. 09-3-0013c

(Shoreline III)

Petitioners,

ORDER OF CONSOLIDATION,
NOTICE OF HEARING AND
PRELIMINARY SCHEDULE

v.

SNOHOMISH COUNTY,

Respondent.

I. THE PETITIONS

The Central Puget Sound Growth Management Hearings Board has received three petitions challenging Snohomish County's enactment of Ordinance Nos. 09-038 and 09-051. On November 9, 2009, the City of Shoreline filed a Petition for Review, which was assigned CPSGMHB Case No. 09-3-0011.

On November 9, 2009, the Town of Woodway filed a Petition for Review, which was assigned CPSGMHB Case No. 09-3-0012.

On November 12, 2009, Save Richmond Beach, a neighborhood association, filed a Petition for Review, which was assigned CPSGMHB Case No. 09-3-0013. On the same day, Save Richmond Beach filed a First Amended Petition for Review, including additional named petitioners.¹

¹ Richmond Beach Preservation Association, Jim Allen, Rae Allen, Randy Belair, Brad Bodley, Gail Dugan, Jerry Dugan, Jayne Engle, Duane Engle, Ken Caley, Kathy Caley, Betty Drury, Jim Golden, Becky Golden, Elwood 'Woody' Hertzog, Judy Lehde, Corliss Liekkio, Pete Liekkio, Rod Madden, Marilyn Madden, Doris McConnell, James McCurdy, Ginny Scantlebury, Roy Scantlebury, Randy Stime, Christine Stime.

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II. ORDER OF CONSOLIDATION

RCW 36.70A.290(5) provides:

The board shall consolidate, when appropriate, all petitions involving the review of the same comprehensive plan or the same development regulation or regulations.

Upon review of the three Petitions and pursuant to RCW 36.70A.290(5), the Board determines that the three petitions challenge the same enactments of Snohomish County.

The Board further determines that the issues raised in the three petitions are similar.

Therefore, these cases should be consolidated.

1. Case Nos. 09-3-0011, 09-3-0012, and 09-3-0013 are hereby consolidated. The new case number for the consolidated case is CPSGMHB Case No. 09-3-0013c.
2. The consolidated cases will be entitled *City of Shoreline, et al v. Snohomish County (Shoreline III)*.

Margaret Pageler is the assigned Presiding Officer.

III. INTERVENTION

The Board has received Motions for Intervention from Paramount of Washington, LLC. pursuant to WAC 242-02-270. Any party has ten days to respond to the motions. Thereafter the Presiding Officer may rule on the intervention or may address the matter at the Prehearing Conference.

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IV. RULES OF PROCEDURE

The Board's Rules of Practice and Procedure, found in the Washington Administrative Code (WAC) at Chapter 242-02 WAC, shall apply to the proceedings in this case.²

V. PRELIMINARY SCHEDULE

Notice is given in the table below of the Preliminary Schedule for hearings as well as for filing of briefs and documents with the Board. The following schedule shall remain in effect unless modified in writing by subsequent order:

November 9, 2009	Petition Filed 09-3-0011
November 9, 2009	Petition Filed 09-3-0012
November 12, 2009	Petition Filed 09-3-0013
November 17, 2009	Order of Consolidation, Notice of Hearing and Preliminary Schedule
December 7, 2009	Index Due (Respondent to file) ³
December 7, 2009 10:00 a.m.	Prehearing Conference – Shoreline Fire Department Headquarters, Fire Station #16, 17525 Aurora Avenue North, Shoreline 98133 (Easiest entrance from southbound lane on Aurora – i.e., building on west side of Aurora Avenue)
December 11, 2009	Prehearing Order
December 21, 2009	Deadline for Dispositive Motions and for Motions to Supplement the Record (proposed supplements to be attached)
January 4, 2010	Deadline for Response to Dispositive Motions or Motions to Supplement the Record
January 11, 2010	Deadline for Reply to Dispositive Motions or Motions to Supplement the Record
January 25, 2010	Anticipated date of Order on Motions

² The Board's handbook, available on the website, may also be useful to the parties. While the handbook is currently undergoing revision due to the Board restructuring, it continues as a substantive reference.

³ Snohomish County should promptly notify the Board if producing the Index in time for the Prehearing Conference presents difficulties.

February 12, 2010	Deadline for Petitioner's Prehearing Brief (with exhibits)
February 26, 2010	Deadline for Respondent's Prehearing Brief (with exhibits)
March 5, 2010	Deadline for Petitioner's Reply Brief (optional)
March 15, 2010	Hearing on Merits of Petition Location to be determined
May 11, 2010	Final Decision and Order Deadline

VII. PREHEARING CONFERENCE

The Prehearing Conference will be held in the Conference Room of the Shoreline Fire Department Headquarters Building, a/k/a Fire Station #16, located at 17525 Aurora Avenue North, Shoreline 98133. This building is on the west side of Aurora, and therefore most easily entered from the southbound lane.

The parties are reminded that the Board's jurisdiction is limited to those subjects set forth in RCW 36.70A.280(1):

A growth management hearings board shall hear and determine only those petitions alleging either:

- (a) That, except as provided otherwise by this subsection, a state agency, county, or city planning under this chapter is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or chapter 90.58 RCW. Nothing in this subsection authorizes a board to hear petitions alleging noncompliance with RCW 36.70A.5801; or
- (b) That the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

At the Prehearing Conference, the parties should be prepared to discuss the final framing of the issues set forth in the Petitions for Review and the general nature of any dispositive motions they intend to file. The parties are advised that the Board will normally only decide

1 the following issues on motions: timeliness of the filing of the petition for review; standing to
2 raise the claims in the petition; and subject-matter jurisdiction.

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4 The Preliminary Schedule established by this Order will be discussed at the Prehearing
5 Conference and may be modified to fit the needs of the parties insofar as the Board
6 determines it can reasonably accommodate them and meet its statutory deadline.

7 Thereafter, any changes to the schedule must be proposed by motion and shall be granted
8 only upon a showing of unforeseeable necessity.
9

10 VIII. SETTLEMENT AND MEDIATION

11 The parties' interest in settlement discussions will be an item of discussion at the Prehearing
12 Conference. If the parties agree that a member of the Eastern or Western Washington
13 Growth Management Hearings Board could be of assistance by serving as a settlement
14 officer, the Presiding Officer will appoint a settlement officer to assist the parties in resolving
15 any or all of the issues presented in the Petition for Review.
16

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18 If the parties reach settlement, the Presiding Officer shall be notified, and a Joint Motion for
19 Dismissal filed with the Board. If settlement is not reached on all issues, the case will
20 proceed as scheduled. The parties are advised that the Board may extend the 180-day
21 decision deadline *for the purposes of settlement*, for up to ninety days. RCW
22 36.70A.300(2)(b).
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24 IX. INTERPRETERS AND ACCOMMODATIONS

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26 If a limited-English speaking or hearing impaired party needs an interpreter for any hearing,
27 a qualified interpreter will be appointed at no cost to the party or witness. A form for a
28 request for an interpreter is attached to this Notice.
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30 X. THE INDEX

31 **Index** - Pursuant to WAC 242-02-520, the County shall prepare an Index that lists all
32 documents considered by the County in taking the challenged action within 30 days of

1 service of the petition.⁴ Each document included in the Index should be given a unique
2 number for identification purposes and to avoid duplication.

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4 The Petitioners shall review the Index prepared by the County promptly and notify the
5 County of any omissions they believe have occurred. If the County agrees, it shall file an
6 Amended Index. If there is a disagreement over whether the item should be included in the
7 record, the proponent may file a motion to supplement the record, attaching the disputed
8 documents.

9 10 **XI. EXHIBITS**

11 The Index is a list of all of the documents considered by the County in taking the challenged
12 action. However, only those documents that are presented to the Board as exhibits are part
13 of the evidence in this case. To become part of the evidence in this case, an exhibit must
14 be presented to the Board as an exhibit to a brief or motion and so marked. Exhibits shall
15 be attached to the brief in which they are referenced and shall include the Index number(s)
16 from which they are drawn. **A Table of Exhibits is required for the hearing briefs.**
17 Parties should tab the exhibits for the benefit of Board members.

18 19 **XII. FAILURE TO ATTEND OR PARTICIPATE**

20 A party who fails to attend or participate in any hearing or other stage of the adjudicative
21 proceedings before the Board in this case may be held in default and an order of default or
22 dismissal may be entered pursuant to WAC 242-02-710.

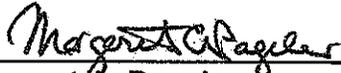
23 24 **XIII. COMMUNICATION WITH THE BOARD**

25 Pursuant to RCW 34.05.455, the parties may not communicate *ex parte* with the presiding
26 officer or other Board members except on limited procedural aspects of this case. The
27 parties are directed to Ms. Linda Stores, Confidential Secretary to the Board, at (360) 586-
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⁴ For the convenience of the parties, the Presiding Officer requests that the Index be provided at the Prehearing Conference.

1 0257, or email at Lindas@cps.gmhb.wa.gov, who shall be the Board's contact for any
2 questions.

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4 DATED this 18th day of November 2009.

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7 _____
8 Margaret A. Pageler
9 Presiding Officer

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INTERPRETER REQUEST

City of Shoreline, et al,
v.

Snohomish County
CPSGMHB Case No. 09-3-0013c

I request that an interpreter be present as follows (Please circle as appropriate):

1. Limited English-speaking ability. My primary language is _____
(Indicate language)
2. Hearing impaired.

Dated this _____ day of _____ 2009.

Signature: _____
Party

Mail to:

**Central Puget Sound Growth Management Hearings Board
P.O. Box 40953
Olympia, WA 98504-0953**

CPSGMHB Case No. 09-3-0013c
Shoreline III, et al v. Snohomish County
DECLARATION OF SERVICE:

I certify that I mailed a copy of the **Order of Consolidation, Notice of Hearing and Preliminary Schedule** to the persons and addresses listed hereon, postage prepaid, in a receptacle for United States mail at Olympia, Washington, on **November 18, 2009**.

Signed: *Winda Ken Storey*

<p><i>Ptr. 206/801-2221 phone 206/546-1453 fax</i> <u>cao@shorelinewa.gov</u> <i>City of Shoreline, CPSGMHB Case No. 09-3-0011</i></p> <p>Ian R. Sievers, City Attorney City of Shoreline 17500 Midvale Avenue North Shoreline, WA 98133</p>	<p><i>Res. 425/388-6330 phone 425/388-6333 fax</i> <i>CPSGMHB Case Nos. 09-3-0011, 09-3-0012 and 09-3-0013</i> <u>jmoffat@co.snohomish.wa.us</u> <u>julie.schaffer@co.snohomish.wa.us</u> <u>bree.urban@co.snohomish.wa.us</u></p> <p>John R. Moffat, Bree Urban and Julie J. Schaffer, Deputy Prosecuting Attorneys for Snohomish County – Civil Division Robert J. Drewel Bldg., 7th Floor, M/S 504 3000 Rockefeller Avenue Everett, WA 98201-4060</p>
<p><i>Ptr. 206/447-7000 phone 206/447-0215 fax</i> <u>watanaka@omwlaw.com</u> <i>Town of Woodway, CPSGMHB Case No. 09-3-0012</i></p> <p>Wayne D. Tanaka, Attorney for Petitioner OGDEN MURPHY WALLACE, P.L.L.C. 1601 Fifth Avenue, Suite 2100 Seattle, WA 98101-1686</p>	<p><i>Intvr. 206/223-1313 phone 206/682-7100 fax</i> <u>ghuff@karrtuttle.com</u> <u>dluetjen@karrtuttle.com</u> <i>CPSGMHB Case Nos. 09-3-0011, 09-3-0012 and 09-3-0013</i> Paramount of Washington, LLC</p> <p>Gary D. Huff and Douglas A. Luetjen Karr Tuttle Campbell 1201 Third Avenue, Suite 2900 Seattle, WA 98101</p>
<p><i>Ptr. 206/624-8300 phone 206/340-9599 fax</i> <i>Save Richmond Beach, Inc. CPSGMHB No. 09-3-0013</i> <u>zhiatt@grahamdunn.com</u> <u>cmolesworth@grahamdunn.com</u> <u>espencer@grahamdunn.com</u></p> <p>Zachary R. Hiatt, Elaine L. Spencer and Claire Molesworth, Attorneys for Ptrs. GRAHAM & DUNN PC Pier 70, 2801 Alaskan Way, Suite 300 Seattle, WA 98121-1128</p>	<p><i>Courtesy 425/637-3693 phone 425/637-3694 fax</i> <u>DianeP@CHSEngineers.com</u></p> <p>Diane Pottinger, P.E. CHS Engineers, LLC 12507 Bel-Red Road, Suite 101 Bellevue, WA 98005</p>