

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

VASHON-MAURY, et al.,)	Case No. 95-3-0008c
)	
Petitioners,)	<i>[Bear Creek Portion]</i>
)	
and)	
)	CORRECTED
UNION HILL WATER)	ORDER FINDING PARTIAL
ASSOCIATION,)	NONCOMPLIANCE AND PARTIAL
)	INVALIDITY
Intervenor,)	
)	
v.)	
)	
KING COUNTY,)	
)	
Respondent.)	
)	
and)	
)	
QUADRANT CORPORATION,)	
et al.,)	
)	
Intervenors.)	

I. Procedural History

On June 15, 2000 the Central Puget Sound Growth Management Hearings Board (the **Board**), issued an “Order on Supreme Court Remand” (the **Board’s Order on Supreme Court Remand**) in the above captioned case.

On June 26, 2000, the Board received from Petitioner Friends of the Law (**FOTL**) a “Motion for Reconsideration of Order on Supreme Court Remand” (**FOTL’s Motion for Reconsideration**).

On July 13, 2000, the Board received “King County’s Answer to Motion for Reconsideration” and “The Quadrant Corporation’s Response to FOTL’s Motion for Reconsideration.”

On July 17, 2000, the Board issued a “Notice of Schedule for Board to Deliberate and Rule on FOTL’s Motion for Reconsideration.”

On August 18, 2000, the Board issued a “Notice of Amended Schedule for the Board to Deliberate and Rule on FOTL’s Motion for Reconsideration.”

On August 22, 2000, the Board issued “Order on FOTL’s Motion for Reconsideration” which denied the motion.

On September 22, 2000, the Board received “King County’s Statement of Compliance Actions” (the **County’s First Statement of Compliance**). Attachment 1 to the First Statement of Compliance is a September 15, 2000 letter from Kevin Wright of the King County Prosecutor’s office to David Bricklin, counsel for FOTL.

Also on September 22, 2000, the Board issued “Notice of Compliance Hearing on Order on Supreme Court Remand” (the **Notice of Compliance Hearing**) which set October 11, 2000 at 1:30 p.m. as the date and time for a compliance hearing in this matter.

On October 3, 2000, the Board received “Friends of the Law Response to King County’s Admission of Noncompliance.”

On October 10, 2000, the Board received “King County’s Statement of Compliance Actions” (the **County’s Second Statement of Compliance**), which had exhibits “A” and “B” attached. Exhibit A is a document titled “Signature Report, October 10, 2000 Ordinance – proposed no. 2000-0557.2” (**Ordinance 13962**)^[1] which included three attachments: “A” Amendment to King County Land Use Map; “B” Amendment to King County Zoning Map; and “C” Central Puget Sound Growth Management Hearings Board Order on Supreme Court Remand, Case No. 95-3-008c[sic] (Bear Creek Portion).^[2] Exhibit B to the County’s Second Statement of Compliance is a September 15, 2000 letter from Kevin Wright of the King County Prosecutor’s office to David Bricklin, counsel for FOTL.^[3]

On October 11, 2000, beginning at 1:30 p.m., the Board held a compliance hearing in this matter in Suite 1022 of the Financial Center, 1215 Fourth Avenue, Seattle, Washington. Present for the Board were members Edward G. McGuire, Lois H. North, and Joseph W. Tovar, presiding officer. Also present for the Board was legal intern Brian Norkus. Representing FOTL was David Bricklin. Also present for FOTL was Joseph Elfelt. Representing the County was Kevin Wright. Representing Intervenor Quadrant Corporation was George Kresovich.

On October 13, 2000, the Board received “King County’s Response to Compliance Hearing Questions” (the **County’s Response to Hearing Questions**) with Attachments A and B. Attachment A to the County’s Response to Hearing Questions is a Notice of Public Hearing for Proposed Ordinance 2000-0557. Attachment B to the County’s Response to Hearing Questions is a copy of “Proposed Ordinance No. 2000-0557.1,” which in turn has Attachments A and B, which are, respectively “Amendment to King County Land use Map,” and “Amendment to King County Zoning Map.”

On October 23, 2000, the Board received “Friends of the Law’s Response to King County’s Post-Compliance Hearing Brief” (the **FOTL’s Response to the County’s Post-Hearing Brief**).

On October 24, 2000, the Board received “Limited Reply of King County” (the **County’s Post-Hearing Reply Brief**).

II. FINDINGS OF FACT

A. Supreme Court Actions

1. On June 10, 1999, the Supreme Court of the State of Washington issued its Decision in King County v. Central Puget Sound Growth Management Hearings Board, 138 Wn2d 161, 176, 979 P2d 374 (1999) (the **Supreme Court Decision**). The Supreme Court remanded to the Board the designation of the Bear Creek Urban Growth Area “for a determination of whether the County has adequately complied with the terms of the Board’s Order on Reconsideration by justifying the Bear Creek urban designation under the terms of the GMA or be redesignating the area as an FCC.” Supreme Court Decision, at 13.
2. The Supreme Court stated: “A UGA designation that blatantly violates GMA requirements should not stand simply because CPPs mandated its adoption. Rather, upon a determination that the provision violates the GMA, it should be stricken from both the comprehensive plan and the CPPs.” Supreme Court Decision, at 10, footnote omitted.

B. Board Actions

3. On June 15, 2000, the Board issued “Order on Supreme Court Remand,” which provided in part:
 1. King County’s justification for the Bear Creek Island UGA fails to comply with the Board’s Order on Reconsideration and the locational criteria for UGAs as found in RCW 36.70A.110(1). The Bear Creek Island UGA designation, or any portion thereof,

that is based upon the locational criteria of RCW 36.70A.110(1), if any, shall be removed from the County's Plan.

...

3. The Board directs King County to remove the Bear Creek Island UGA designation, or portion thereof, if any, that is based upon the locational criteria of RCW 36.70A.110(1), by no later than Friday, September 15, 2000.

Board's Order on Supreme Court Remand, at 30.

C. County Actions

4. Ordinance 13962^[4] was introduced and had its first reading at the County Council's September 25, 2000 meeting. No published or mailed notice of this Ordinance was given prior to its introduction and first reading. County's Response to Hearing Questions, at 3.
5. On October 9, 2000 the County Council considered, amended and adopted Ordinance 13962. No published or mailed notice of this Ordinance was given prior to adoption. County's Response to Hearing Questions, at 3-4. Also, at 4, footnote 2.
6. Ordinance 13962 was adopted as an emergency ordinance, providing "This ordinance is adopted in accordance with the provisions governing interim zoning set forth under RCW 36.70A.390. King County will hold a public hearing on this interim zoning ordinance within 60 days of its adoption." Section I, Paragraph Q, Ordinance 13962.
7. Section II of Ordinance 13962 provides, in part: The amendments to the 1994 King County Comprehensive Plan Land Use Map contained in Attachment A to Ordinance are hereby adopted to comply with the Central Puget Sound Growth Management Hearings Board Decision and Order on Supreme Court Remand in Vashon-Maury Island, et. al, v King County, Case No. 95-3-0008 (Bear Creek Portion). Section II, Paragraph S, Ordinance 13962. Underlined emphasis in original.
8. Attachment A to Ordinance 13962 is a map titled "Amendment to King County Land Use Map." The area shown is bounded roughly on the west by 208th Ave NE, on the north by NE 145th St., on the east by West Snoqualmie Road NE, and on the south by NE 90th St.
9. Attachment A to Ordinance 13962 depicts the Bear Creek Urban Island with a heavy black line, and a dashed line around the perimeter of the Redmond Ridge FCC, which is

marked on the plan map with the designation “upd.” Areas north and east of the Redmond Ridge FCC are shaded and bear the designation “rr” as well as crossed-out “upd” designations. In the legend, the letters “upd” connote “Urban Plan Development” and “rr” connotes “Rural Residential.”

10. Section III of Ordinance 13962 provides, in part: “Appendix B to Ordinance 12824 is hereby amended by removing special district overlay SO-070 from those portions of the Bear Creek urban planned development that are being rezoned to RA-5-P-SO as shown on the map in Attachment B to this ordinance.”

11. Attachment B to Ordinance 13962 is a map titled “Amendment to King County Zoning Map.” The area shown is identical to the area shown in Attachment A. The map also depicts the Bear Creek Urban Island with a heavy black line, but does not use a dashed line to differentiate between the Redmond Ridge FCC and the balance of the Island. Instead, it shows the Redmond Ridge portion with a designation of “UR-P-SO.” The map shows the rest of the Bear Creek Island as “RA-5-P-SO” with the crossed out term “UR-P-SO.”

12. The legend in Attachment B to Ordinance 13962 includes the following definitional text: “UR-P-SO = Urban Reserve, with P-Suffixes and Special Overlays” and “RA-5-P-SO = Rural Area, 5 Dwelling Units per Acre, with P-Suffixes and Special Overlays.”

13. On October 13, 2000, the County issued a “Notice of Public Hearing” (the **Notice**) on Proposed Ordinance 2000-0557 (a/k/a Ordinance 13962) which provided, in part:

NOTICE IS HEREBY GIVEN that the Metropolitan King County Council (the Council) will hold a public hearing in the Council Chambers on the 10th Floor of the King County Courthouse (516 Fourth Avenue, Seattle, WA) on Monday, November 13, 2000, beginning at 1:30 PM. The purpose of this public hearing is to consider adoption or retention (consistent with RCW 36.70A.390) of Proposed Ordinance 2000-0557 adopting amendment to the 1994 King County Comprehensive Plan (KCCP) and area zoning, to comply with the Central Puget Sound Growth Management Hearings Board’s (the board’s) Decision and Order on Supreme Court Remand in Vashon-Maury et. Al v. King County, case No. 95-3-0008.

III. Compliance Issues

A. Applicable Law

1. RCW 36.70A.330 - Noncompliance

RCW 36.70A.330 provides, in relevant part:

(1) After the time set for complying with the requirements of this chapter under RCW 36.70A.300(3)(b) has expired . . . the board shall set a hearing for the purpose of determining whether the . . . county . . . is in compliance with the requirements of this chapter.

(2) The board shall conduct a hearing and issue a finding of compliance or noncompliance with the requirements of this chapter and with any compliance schedule established by the board in its final order. . . .

(3) If the board after a compliance hearing finds that the . . . county . . . is not in compliance, the board shall transmit its findings to the governor. The Board may recommend to the governor that the sanctions authorized by this chapter be imposed. The board shall take into consideration the . . . county's . . . efforts to meet its compliance schedule in making the decision to recommend sanctions to the governor.

(4) In a compliance hearing upon petition of a party, the board shall also reconsider its final order and decide, if no determination of invalidity has been made, whether one now should be made under RCW 36.70A.302.

Emphasis added.

2. RCW 36.70A.302 - Invalidity

RCW 36.70A.302 provides, in relevant part:

(1) A board may determine that part or all of a comprehensive plan or development regulations are invalid if the board:

(a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;

(b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and

(c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

B. Discussion

The purpose of the compliance hearing is to determine whether compliance has been achieved

with the requirements of the Act, as interpreted and set forth in the Board's Order on Supreme Court Remand. RCW 36.70A.330(1), (2) and WAC 242-02-891(1). In this case the Board was explicit in its direction to the County regarding compliance. *See* Finding of Fact 3, *supra*. Petitioner FOTL bears the burden of proof to persuade the Board that the County's actions taken to comply do not comply with the GMA.

FOTL did not dispute the fact that the County had "removed the Bear Creek Island UGA designation" from its Plan and Zoning maps. However, FOTL offered arguments regarding three specific issues (two procedural and one substantive) that FOTL contends affect the County's compliance: (1) that the County did not meet the requirements for public participation under the GMA;^[5] (2) that the County did not comply with the Board's Order on Supreme Court Remand because it adopted "interim" rather than permanent measures;^[6] and (3) that the County's plan does not comply with the GMA because the plan, as amended, is inconsistent with CPP LU-26(b).^[7] Based on these three arguments, FOTL asks that the Board enter a finding of noncompliance and invalidity and order the County to delete or amend the CPP in order to achieve consistency between plan and CPP.

A fourth compliance issue arose at the compliance hearing when the Board pointed out that the text of the legend of the amended zoning map described a density of 5 dwelling units per acre [an urban density] rather than one unit per five acres [a rural density].

IV. DISCUSSION OF ISSUES PRESENTED AND CONCLUSIONS

A. Did the County fail to comply with the GMA requirements for public participation?

The Board answers in the affirmative with respect to the Plan amendment in Exhibit A to Ordinance 13962.

Ordinance 13962 amended both the County's Plan and Zoning. FOTL complains that, while Quadrant had notice of the Council's October 9, 2000 hearing to consider and adopt the Ordinance, no notice was given to FOTL.^[8] *See* Findings of Fact 4 and 5. FOTL argues that, at the least, it should have received some indication from the County that this action was being scheduled and that an opportunity for comment would be available.

The County responds that it relied on RCW 36.70A.390 as authority for its action, adopting both the plan amendment and the zoning amendment by emergency ordinance and without prior notice.

... the GMA authorizes cities and counties to amend their comprehensive plans and development regulations on an expedited basis to address emergencies or to comply with a Board order. RCW 36.70A.130(2)(b). Under such circumstances, both of which are present here, the GMA requires that a local government provide only for “appropriate public participation.” RCW 36.70A.130(2)(b). Under the circumstances, King County met this standard.

County’s Response to Hearing Questions, at 4.

The public participation provisions at issue here are RCW 36.70A.130^[9] and RCW 36.70A.390.

^[10] The only authority mentioned in the Ordinance itself was RCW 36.70A.390. *See* Finding of Fact 6. No reference appears in the Ordinance to RCW 36.70A.130.

The Board agrees that the County may appropriately rely on RCW 36.70A.390 for the portion of Ordinance 13962 that amended the zoning map. That is because a zoning map is one of the things specifically listed in .390.

The nature of a “moratorium, interim zoning map, interim zoning ordinance, or interim official control” is that it controls the use of land and the issuance of permits. In an emergency situation where the County wishes to prevent inappropriate vesting it would be necessary to act first to amend the land use controls (e.g., zoning map) and then have a public hearing within sixty days. To give notice of the consideration of an emergency interim control could precipitate a “rush to the permit counter” and undermine the objectives of adopting the interim control.

However, comprehensive plans are an entirely different matter. The Board has previously held that plans are not development regulations.^[11] A plan is not a “moratorium, interim zoning map, interim zoning ordinance, or interim official control” as that phrase is used in RCW 36.70A.390. Comprehensive plans do not control the issuance of permits^[12] nor directly control the use of land. Rather, comprehensive plans are directive to development regulations and capital budgeting decisions. The foundation for plan making under the GMA is public participation. The same is true even for plan amendments. RCW 36.70A.130 explicitly recognizes the use of emergency ordinances to amend plans. Significantly, however, even such emergency actions can only be taken “after appropriate public participation.”

The County has argued that it “met the standard” for public participation in the case of Ordinance 13962. With respect to the zoning amendment in Exhibit B, the Board agrees. With respect to the plan amendment in Exhibit A, the Board disagrees. To reach this conclusion, with these facts and

in the context of a compliance hearing, it is not necessary for the Board to define the totality of what “appropriate public participation” means for the adoption of an emergency ordinance amending a comprehensive plan. Where, as here, the local government conducts a “public hearing,”^[13] the local government has a duty to disseminate effective notice of the hearing.^[14] How else can the “public” be engaged and “heard” by the legislative body? To place the onus on the public to find out about the hearing, as the County suggests^[15], misplaces the duty on the citizen rather than on the government. FOTL, as a member of the public, had a reasonable expectation that it would have been alerted to the public hearing about the plan amendment proposal before the County took action on October 9.

The Board therefore finds that the County failed to comply with the requirements of RCW 36.70A.130 because Ordinance 13962 amended the plan without appropriate public participation. The Board will remand Exhibit A of the Ordinance to the County and direct that the County schedule a public hearing and provide proper public notice of same. Given the unique facts and circumstances in the present case, proper public notice must include direct notice to FOTL, and the hearing can be as soon as the November 13, 2000 date that the County has already scheduled for the interim zoning matter.

B. Did the County’s adoption of “interim” rather than permanent policies and regulations fail to comply with the Board’s Order?

The Board answers in the affirmative with respect to both the plan amendment in Exhibit A and the zoning amendment in Exhibit B of Ordinance 13962.

The County adopted Ordinance 13962 under the authority of RCW 36.70A.390. *See* Finding of Fact 6. On October 13, 2000, after adoption of Ordinance 13962, the County issued a Notice of Public Hearing (the **Notice**) indicating that on November 13, 2000 it would conduct a public hearing, the purpose of which is “to consider adoption or retention (consistent with RCW 36.70A.390) of Proposed Ordinance 2000-0557 [a/k/a Ordinance 13962] adopting amendments to the 1994 King County Comprehensive Plan (KCCP) and area zoning . . . “ *See* Finding of Fact 13.

FOTL argues that the use of the words “adoption” and “retention” in the Notice suggests that “the ordinance adopted on October 9, 2000 will not have a life past November 13, 2000 unless the County takes further action (“adoption”) on that date to keep it in effect.” FOTL’s Response to the County’s Post-Hearing Brief, at 2. Petitioner also contends that, because RCW 36.70A.390 relates to “moratorium, interim zoning map, interim zoning ordinance, or interim official controls” the County’s use of this statutory provision underscores “that the County considers the ordinance to be interim in nature.” *Id.* FOTL argues:

Given King County's apparent treatment of the ordinance adopted on October 9, 2000 as an interim ordinance to be reconsidered on November 13, 2000, the Board should determine that the County is not currently in compliance with the Act's requirements . . . FOTL's Response to the County's Post-Hearing Brief, at 3.

The County replies that FOTL incorrectly interprets the law and incorrectly perceives the County's intentions. The County argues that Ordinance 13962 does not expire on November 13, 2000, and that "unless and until the Council decides to amend or repeal the Ordinance . . . it will remain in full force and effect." County's Post-Hearing Reply Brief, at 1. The County states that the purpose of the November 13, 2000 public hearing is to allow public participation and is "not part of some nefarious plot to cause this legislation to sunset." *Id.*

The Board acknowledges FOTL's skepticism, however, the Board presumes that the County will act in good faith to comply with the requirements of the Board's Orders. The Board disagrees with FOTL's assumption that the "interim" Ordinance will not have a life beyond November 13, 2000 absent an "action by the County on that date to keep it in effect." As the County pointed out, there is no sunset provision explicitly listed in the Ordinance. The Board, however, also disagrees with the County's conclusion that an interim ordinance continues in force and effect in perpetuity. By the explicit terms of RCW 36.70A.390, "a legislative enactment "adopted under this section may be effective for not longer than six months . . ."

Therefore, absent some legislative action by the County, the provisions of Ordinance 13962 have no force and effect beyond April 7, 2001 (180 days after the October 9, 2000 adoption date of the interim ordinance). Such an outcome would not comply with the direction in the Board's Order on Supreme Court Remand.

Therefore, the Board concludes that the use of an interim ordinance only achieved partial compliance with the Board's Order on Supreme Court Remand. It served the purpose of precluding inappropriate vesting during an interim period. However, in order to achieve complete compliance, the County may not adopt interim measures. Appropriate measures must be adopted pursuant to RCW 36.70A.040 and .130. The Board will so order.

C. Does the County's plan fail to comply with the GMA because the plan, as amended, is inconsistent with CPP LU-26(b)? ^[16]

The Board answers in the negative.

FOTL argues that there is an ongoing inconsistency between the plan designation of rural and the CPP designation of urban. The Board disagrees. The Supreme Court stated that "upon a determination that the [UGA] provision violates the GMA, it should be stricken from both the

comprehensive plan and the CPPs.” (emphasis added) *See* Finding of Fact 2. The Board has determined that the County’s UGA provision for Bear Creek violates the GMA. *See* Finding of Fact 3, *supra*. Therefore, by operation of law, the urban designation has effectively been stricken from both the plan and the CPP. A CPP that directs an unlawful outcome is inoperative. CPP LU-26(b) cannot and does not direct that any of the lands in question be designated urban.

The Board need not and does not direct the County to take any action relative to CPP LU-26(b). The Supreme Court has provided that direction.

D. Does the zoning map “error” violate the GMA?

The Board answers in the affirmative.

The text of the County’s zoning map legend in Attachment B to Ordinance 13962 does not reflect the rural densities set forth for these same areas in the County’s plan designations in Attachment A to Ordinance 13962. To comply with the GMA, the Board directed the County to remove the noncompliant UGA designation, thereby eliminating any urban density designations. The legend on the zoning map includes an *urban* density of five dwelling units per acre. *See* Finding of Fact 12. Consequently, the legend reference is, on its face, noncompliant with the GMA and the Board’s Order. Additionally, RCW 36.70A.040(4)(d) mandates that development regulations, such as zoning, must be “consistent with and implement the comprehensive plan.” The five units per acre zoning density in Exhibit B is 25 times more dense than the one unit per five acre plan density in Exhibit A. This legend discrepancy, whether or not inadvertent on the County’s part, nevertheless means that a portion of Ordinance 13962 is not in compliance with the GMA. [RCW 36.70A.110 and .040(4)(d)].

V. DETERMINATION OF INVALIDITY

The Board may determine challenged amendments invalid if the Board concludes that their continued validity would substantially interfere with the fulfillment of the goals of the Act. RCW 36.70A.330(4). The Board has concluded above that a portion of the text of the County’s zoning map legend in Attachment B to Ordinance 13962, does not comply with the Act since it reflects urban densities in a rural area and these densities are inconsistent with the rural densities set forth for these same areas in the County’s plan designations in Attachment A to Ordinance 13962. The Board directed the County to remove the UGA (urban densities) to comply with RCW 36.70A.110(1) and RCW 36.70A.040(4)(d) mandates that development regulations, such as zoning, must be “consistent with and implement the comprehensive plan.” The urban density of five units per acre in Exhibit B is 25 times more dense than the rural density of unit per five acres shown as the plan density in Exhibit A. This error or discrepancy, even if due to inadvertence on the County’s part, nevertheless means that a portion of Ordinance 13962 is not in compliance

with RCW 36.70A.110 and .040(4)(d).

The legend on Attachment B to Ordinance 13962 **does not comply** with RCW 36.70A.110 and .040(4)(d). So long as the official zoning map of the County shows the “5 dwelling unit per acre” density for the rural areas shown on Exhibit B, the potential for vesting of inappropriate project densities exists. To allow such vesting to occur, contrary to the County’s adopted land use policy of one dwelling unit per 5 acres, would also substantially interfere with the fulfillment of the GMA’s goals set forth at RCW 36.70A.020(1) and (2). ^[17] Therefore, the Board determines that the portion of the text in Exhibit B of Ordinance 13962, (the legend) that reads ““RA-5-P-SO = Rural Area, 5 Dwelling Units Per Acre” is **invalid**.

VI. ORDER

Based upon the above referenced documents, the Findings of Fact, and the Conclusions of Law set forth herein, the Board **ORDERS**:

1. The County has **partially complied** with the requirements of the GMA as set forth in the Board’s Order on Supreme Court Remand, **except** for the following:

- a. Exhibit A of Ordinance 13962, (the Plan Amendment) while it complies substantively with the Board’s Order on Supreme Court Remand, is in noncompliance with RCW 36.70A.130 because this portion of Ordinance 13962 was not adopted “after appropriate public participation”.
- b. Exhibit B of Ordinance 13962, (the Zoning Amendment) is in noncompliance with RCW 36.70A.110 and .040 because the legend lists an urban density (Five units per acre) where the Board’s Order on Supreme Court Remand and the County’s amended plan call for a rural density. The Board also enters a **determination of invalidity** regarding the portion of the legend that describes the density of “rr” as five units per acre.
- c. Ordinance 13962 is an interim ordinance. The County cannot attain complete compliance with the GMA as set forth in the Board’s Order on Supreme Court Remand through the adoption of interim measures. Non-interim measures must be adopted to attain compliance with the Board’s Order on Supreme Court Remand.

2. The Board **remands** Ordinance 13962 to the County with direction to take the following remedial actions by no later than **November 27, 2000**:

- a. The County is directed to conduct a public hearing, after appropriate notice, to provide an opportunity for the public to be heard regarding the adoption of

Exhibit A of Ordinance 13962.

b. The County is directed to take legislative action to remove the text from the zoning map legend in Exhibit B of Ordinance 13962 that states “RA-5-P-SO = Rural Area, 5 Dwelling Units Per Acre.”

c. The County is directed to take legislative action, pursuant to the authority and public participation provisions of RCW 36.70A.040 and .130, to adopt non-interim plan and zoning regulations, including text and map designations, to achieve complete compliance with the Board’s Order on Supreme Court Remand and the County’s rural plan designation.

3. The County is directed to file with the Board a “Statement of Actions Taken to Comply with the Board’s November 3, 2000 Order” (the **SATC**), which shall include copies of all legal notices given and legislative enactments adopted to achieve compliance with the GMA as interpreted in this Order. The County shall provide four copies of the SATC to the Board and a copy to each of the parties by no later than **4:00 p.m., Monday, December 11, 2000**.

4. Petitioner FOTL and Intervenor Quadrant may, each at their option, submit comment on the County’s SATC by no later than **4:00 p.m., Thursday, December 14, 2000**. If comment is received, the County and Quadrant may respond at the compliance hearing.

5. The Board hereby schedules a second compliance hearing in this matter for **Monday, December 18, 2000, at 10:00 a.m.** in the Board’s offices.

6. As required by RCW 36.70A.330(3) the Board shall transmit to the Governor a copy of this Order Finding Partial Noncompliance and Partial Invalidity.

So ORDERED this 8th day of November, 2000.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Edward G. McGuire, AICP
Board Member

Lois H. North
Board Member

Joseph W. Tovar, AICP
Board Member

- [1] The County indicated that 13962 is the number that was assigned to proposed Ordinance 2000-0557 upon its final enactment by the King County Council. County's Second Statement of Compliance, fn 1, at 1.
- [2] The Board notes that, although this Order was 42 pages long, the copies in Exhibit C submitted to the Board included only the odd numbered pages.
- [3] This is the same letter that the County submitted as Attachment 1 to the County's First Statement of Compliance Actions.
- [4] As noted above, at the time of its introduction, the proposed Ordinance number was 2000-0557.
- [5] FOTL's Response to the County's Post-Compliance Hearing Brief, at 5-6.
- [6] FOTL's Response to the County's Post-Compliance Hearing Brief, at 2-3.
- [7] FOTL's Response to the County's Post-Compliance Hearing Brief, at 3-5.
- [8] It is undisputed that Quadrant appeared and gave testimony at the County Council's October 9, 2000 public hearing .
- [9] RCW 36.70A.130 provides, in part:
- (2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program identifying procedures whereby proposed amendments or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year except that amendments may be considered more frequently under the following circumstances . . .
- (b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, **after appropriate public participation** a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with a growth management hearings board or with the court. Emphasis added.
- [10] RCW 36.70A.390 provides, in part:
- A county or city governing body that adopts a moratorium, interim zoning map, interim zoning ordinance, or interim official control without holding a public hearing on the proposed moratorium, interim zoning map, interim zoning ordinance, or interim official control, shall hold a public hearing on the adopted moratorium, interim zoning map, interim zoning ordinance, or interim official control within at least sixty days of its adoption, whether or not the governing body received a recommendation on the matter from the planning

commission or department. If the governing body does not adopt findings of fact justifying its action before this hearing, then the governing body shall do so immediately after this public hearing. A moratorium, interim zoning map, interim zoning ordinance, or interim official control adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium, interim zoning map, interim zoning ordinance, or interim official control may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal. Emphasis added.

[11] The Board has stated:

[The GMA] definition of policy refers to “principles,” “plans” or “courses of action” pursued by government. Such definitions describe the nature of . . . the comprehensive plans of cities and counties. Policy documents such as . . . comprehensive plans are not “development regulations” under the GMA. *Snoqualmie v. King County*, CPSGMHB Case No. 92-3-0004, Final Decision and Order, March 1, 1993, at 12.

[12] The Supreme Court made clear that, in matters governing permit issuance, a zoning provision controls the outcome, rather than a contrary comprehensive plan provision. “Since a comprehensive plan is a guide and not a document designed for making land use decisions, conflicts surrounding the appropriate use are resolved in favor of the more specific regulations.” *Citizens for Mt. Vernon v. Mt. Vernon*, 133 Wn 2d 861, 947 P 2d 1208 (1997).

[13] The County states that it conducted a “public hearing” on this matter. County’s Response to Compliance Hearing Questions, at 4, fn.2.

[14] In *WRECO v. DuPont*, CPSGMHB Case No. 98-3-0035, Final Decision and order (May 17, 1999), at 6, the Board stated:

[P]ublic notice [is at] the core of public participation. The Board recently stated “it is axiomatic that without effective notice the public does not have a reasonable opportunity to participate.” (citations omitted).

[15] For example, the County contends that it met the “standard” for appropriate public participation by placing the Ordinance on the County’s website, televising the hearing itself on CTV and fielding telephone calls from any citizen who took it upon him/herself to call.

[16] County-wide Planning Policy LU-26(b) provides:

The GMPC recognizes that the Bear Creek Master Plan Developments (MPDs) are subject to an ongoing review process under the adopted Bear Creek Community Plan and recognizes these properties as urban under these Countywide Planning Policies. If the applications necessary to implement the MPDs are denied by King County or not pursued by the applicant(s), then the property subject to the MPD shall be redesignated rural pursuant to the Bear Creek Community Plan. Nothing in these Planning Policies shall limit the continued review and implementation through existing applications, capital improvements appropriations or other approvals of these two MPDs as new communities under the Growth Management Act.

[17] RCW 36.70A.020 provides, in relevant part:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

