CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON

VASHON-MAURY, et al., Petitioners, and UNION HILL WATER ASSOCIATION, Intervenor, v. KING COUNTY, Respondent. and QUADRANT CORPORATION, et al., Intervenors.	**Case No. 95-3-0008c** **[*Bear Creek Portion*]** **ORDER RESCINDING PARTIAL INVALIDITY AND FINDING COMPLIANCE**

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**). 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**), 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]

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**). On November 3, 2000, the Board issued "Order Finding Noncompliance and Partial Invalidity."

On November 8, 2000, the Board issued "Scrivener's Error Corrections to Order Finding Partial Noncompliance and Partial Invalidity."

On December 11, 2000, the Board received "County's Statement of Compliance Actions" (the **County's Third Statement**). There were a number of attachments to the County's Third Statement, including Attachment "A" – Ordinance 13987. Later on this same date, the Board issued "Notice of Revised Date for Compliance Hearing" which moved the date for the compliance hearing to December 21, 2000.

On December 14, 2000, the Board received "Friends of the Law's Response to Statement of Actions Taken to Comply with the Board's Nov. 3, 2000 Order."

On December 21, 2000, the Board held a compliance hearing in Suite 1022 of the Financial Center, 1215 Fourth Avenue, Seattle. Present for the Board were Edward G. McGuire, Lois H. North and Joseph W. Tovar, presiding officer. Also present was the Board's legal extern, Brian Norkus. Representing Petitioner Friends of the Law was David Bricklin. Representing the County was Kevin Wright. Representing Intervenor Quadrant Corporation was Richard Wilson. Court reporting services were provided by Robert Lewis of Tacoma, Washington. No witnesses testified.

II. <u>Findings of Fact</u>

1. On October 13, 2000, the County published a "Notice of Public Hearing" regarding proposed Ordinance 2000-0557. The Noticed provided, in pertinent part:

> [T]he Metropolitan King County Council (the Council) will hold a public hearing … on Monday, November 13, 2000, beginning at 1:30 P.M. . . . The subject legislation is the vehicle by which King County proposes to comply with the board's decision and order in Vashon-Maury, et. al v. King County. Proposed Ordinance No. 2000-0557 affects those portions of the Bear Creek Urban Planned Development (UPD) site that are not included within the approve fully contained community of Redmond Ridge . . County's Third

Statement, Attachment B.

2. On November 3, 2000, the Board issued "Order Finding Partial Noncompliance and Partial Invalidity." In its discussion of the issues the Board stated:

> 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. Order Finding Partial Noncompliance and Partial Invalidity, at 10.

3. The Board remanded Ordinance 13962 to the County with direction to take the following remedial actions:

> 2.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.
>
> 2.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."
>
> 2.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.

Order Finding Partial Noncompliance and Partial Invalidity, at 13-14.

4. On November 8, 2000, counsel for the County called counsel for FOTL to notify him and his client about the November 13, 2000 hearing. County's Third Statement, at 4.

5. On November 9, 2000, a County staff person called Joseph Elfelt to notify him personally of the November 13, 2000 public hearing, and emailed him to confirm this notification. County's Third Statement, at 4, and Attachment E to County's Third Statement.

6. On November 9, 2000, the County sent a letter to counsel for FOTL, confirming the earlier telephonic indication that the County was going to have a hearing on November 13, 2000. County's Third Statement, Attachment F.

7. On November 13, 2000, the County Council held a public hearing on proposed Ordinance 2000-0557. No witnesses testified. The Council continued the public hearing until November 20, 2000. County's Third Statement, at 3-4.

8. On November 20, 2000, the County Council held the continued public hearing on proposed Ordinance 2000-0557 (a/k/a Ordinance 13987.) No witnesses testified. County's Third Statement, at 3-4.

9. Ordinance 13987 adopts plan amendments and zoning amendments for the Bear Creek Area in response to the Board's November 3, 2000 Order Finding Noncompliance and Partial Invalidity. Attachment A to Ordinance 13987 shows amendments to the County's land use map with a designation of "rr" rural residential for lands outside the Redmond Ridge FCC. Attachment B to Ordinance 13987 shows amendments to the County's zoning map for the same area, with a designation of RA-5-P-SO and a notation that the density for this rural area is "one Dwelling unit per 5 acres." County's Third Statement, Attachment A.

10. The County Council adopted Ordinance 13987 on November 20, 2000. County's Third Statement, at 4.

III. CONCLUSION OF LAW

The County was directed to conduct a public hearing, after appropriate notice, to provide an opportunity for the public to be heard regarding the proposed adoption of the plan amendment shown in Exhibit A of Ordinance 13962. *See* Finding of Fact 3, sub-paragraph 2.a. The Board concluded that "proper" public notice could be as soon as November 13, 2000 and should include direct notice to FOTL. *See* Finding of Fact 2. The County published public notice of the November 13, 2000 hearing (*see* Finding of Fact 1) and provided direct notice to FOTL (*see* Findings of Fact 4, 5 and 6). The Board concludes that the County has complied with remand item 2.a.

The County was directed to take legislative action to remove the text from the zoning map that made reference to a rural density of 5 dwelling units per acre. *See* Finding of Fact 3, sub-paragraph 2.b. The County's adoption of Ordinance 13987 was legislative action that corrected the rural density to "five units per acre." *See* Finding of Fact 9. The Board concludes that the County has complied with remand item 2.b.

The County was directed to take legislative action to adopt non-interim plan and zoning designations, both text and maps, to designate the non-FCC portions of the Bear Creek area as rural residential. *See* Finding of Fact, sub-paragraph 2.c. By its explicit terms, Ordinance 13987 adopted the rural plan and zoning designations on a "non-interim basis." Ordinance 13987,

Section 1.E, line 38. The Board concludes that the County has complied with remand item 2.c.

IV. FINDING OF COMPLIANCE

1. RCW 36.70A.330 requires the Board to conduct a compliance hearing. The Board conducted its compliance hearing on Thursday, December 21, 2000.

2. Based upon a review of the Board's June 15, 2000 Order on Supreme Court Remand, the Board's November 3, 2000 Order Finding Partial Noncompliance and Partial Invalidity, the County's Statement of Compliance Actions, Friends of the Law's Response to Statement of Actions Taken to Comply with the Board's November 3, 2000 Order, the oral arguments presented by the parties at the compliance hearing, and considering Findings of Fact 1–10, and Conclusions of Law, *supra*, the Board finds that the County **has complied** with the requirements of the GMA as set forth in the aforementioned Board Orders.

3. The Board **rescinds** its Determination of Partial Invalidity as to the Bear Creek portion of the *Vashon-Maury* case and issues this **Finding of Compliance** to King County in CPSGMHB Case No. 95-43-0008c, *Vashon-Maury, et al., v. King County [Bear Creek Portion]*.

4. Because the Bear Creek portion was the last remaining portion of the *Vashon-Maury* case, the Board hereby closes that case.

5. The Board will transmit a copy of this Order Rescinding Partial Invalidity and Finding Compliance to the Governor and notify him that the Board's review of this case is now closed.

So ORDERED this 7th day of January, 2001.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

_____

Edward G. McGuire, AICP
Board Member

_____

Lois 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.