

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

BUCKLES, et al.,	)	<b>Superior Court Remand of</b>
	)	<b>Case No. 96-2-31900-7.KNT</b>
	)	
Petitioners,	)	<b>CPSGMHB Case No. 96-3-0022c</b>
v.	)	<b><i>Buckles, et al., v. King County</i></b>
	)	<b><i>(Duwamish Portion)</i></b>
KING COUNTY,	)	
	)	<b>ORDER FINDING</b>
	)	<b>NONCOMPLIANCE AND NOTICE</b>
Respondent.	)	<b>OF COMPLIANCE HEARING</b>
	)	
and	)	
	)	
PORT BLAKELY TREE FARMS, QUADRANT CORPORATION, et al.,	)	
	)	
Intervenors.	)	

**I. Procedural Background**

On October 23, 1995, the Central Puget Sound Growth Management Hearings Board (the **CPSGMHB** or the **Board**), issued a Final Decision and Order (the **Vashon-Maury FDO**) in *Vashon-Maury, et al., v. King County, et al.*, CPSGMHB Case No. 95-3-0008c, (the short case title is *Vashon-Maury*). The FDO dealt with almost sixty issues raised in nine consolidated petitions for review, all of which challenged the King County (the **County**) comprehensive plan (the **Plan**) for noncompliance with the Growth Management Act (**GMA** or the **Act**). The portion of the Plan which dealt with the Spencer Properties area (the **Duwamish Portion**) was challenged by petitioner Duwamish Valley Neighborhood Preservation Coalition (**Petitioner** or **DVNPC**).

In the *Vashon-Maury* FDO, the Board concluded the following regarding the challenged Duwamish portion of the County's Plan:

Comprehensive Plan Map Amendments 89 [the Spencer properties amendment], 90, and 101 and Zoning Map Amendments 81 and 81A are remanded to the County with

direction to delete them and provide a reasonable opportunity for public comment prior to consideration by the Council before subsequent readoption.

On March 11, 1996, the County Council adopted Ordinance 12170 in partial response to the Board's remand order.

On May 24, 1996, the Board issued an Order concluding that the County had complied with the remand direction in the *Vashon-Maury* FDO, including the Duwamish Valley portion, and determined that challenges to the County's public participation compliance upon remand would have to be filed as a new petition for review. *Vashon-Maury*, Finding of Compliance, May 24, 1996, at 10.

After receiving a new petition for review from DVNPC challenging adoption of Ordinance 12170, the Board consolidated the new PFR with two others into Consolidated Case No. 96-3-0022c, *Buckles, et al., v. King County*.

On November 12, 1996, the Board issued a Final Decision and Order (the **Buckles FDO**) in Case No. 96-3-0022c. The Board concluded that the challenged amendments, including the Duwamish Valley portion, were in compliance with the GMA. *Buckles FDO*, at 33.

On June 28, 1999, the Washington State Court of Appeals, Division One, issued its opinion in *Duwamish Valley Neighborhood Preservation Coalition v. Central Puget Sound Growth Management Hearings Bd.*, No. 41523-9-I (the **Court's Decision**). While upholding the *Buckles FDO*, in part, the Court of Appeals remanded the Duwamish Valley portion to the Board. The Court stated:

We find that the Board acted arbitrarily and capriciously by refusing to allow the Coalition to supplement the record with its rebuttal evidence. Accordingly, we reverse the Board and remand the matter with directions for the Board [to] permit supplementation of the record with the Coalition's evidence regarding the adequacy of the County's mailed notice, and for a redetermination by the Board, based on the supplemented record, as to whether the County complied with the GMA's public participation requirements. We affirm the Board's decision in all other respects. *Court's Decision*, at 2.

On December 5, 2000, the Board received notice that the Clerk of the King County Superior Court advised that the Court entered on their docket on November 30, 2000 that the matter was remanded to the Board and that no other notices would go out.

On January 12, 2001, the Board issued "Notice of Compliance Hearing Pursuant to Duwamish

Valley Neighborhood Preservation Coalition v. CPSGMHB, et al., Court of Appeals Case No. 41523-9-I and King County Superior Court Mandate in Case No. 96-2-31900-7.KNT” (the **Notice of Compliance Hearing**).

On January 29, 2001, the Board conducted a pre-compliance hearing in this matter in Suite 1022 of the Financial Center, 1215 Fourth Avenue, in Seattle. Present for the Board were members Lois H. North and Joseph W. Tovar, presiding. Representing the Petitioner was Steve Fredrickson. Representing the County was Cheryl D. Carlson. The Board reviewed with the parties the remand of this matter from the courts and discussed a briefing and hearing schedule as well as the record and the legal issue to be briefed and argued. Counsel for the parties agreed that they would submit a stipulation regarding supplementation of the record.

On February 2, 2001, the Board received from the parties a “Stipulation to Supplement the Record” (the **Stipulation to Supplement the Record**).

On February 5, 2001, the Board issued “Pre-Remand Hearing Order” (the **PRHO**). The PRHO identified the materials in the Record of this proceeding, set forth a briefing schedule and a statement of the legal issue presented for the Board’s determination. The PRHO also indicated that, at its discretion, the Petitioner could brief the question of whether the Board should use the “preponderance of the evidence” standard rather than the “clearly erroneous standard.”

On March 6, 2001, the Board received “Petitioner DVNPC’S Pre-Remand Hearing Brief” (**DVNPC’s Brief**) with attachments.

On March 16, 2001, the Board received “King County’s Pre-Remand Hearing Brief” (the **County’s Brief**).

On March 19, 2001, the Board received “Petitioner DVNPC’s Pre-Remand Hearing Reply Brief” (**DVNPC’s Reply**).

On March 22, 2001, the Board conducted the remand hearing in this matter in Suite 1022 of the Financial Center, 1215 Fourth Avenue, in Seattle. Present for the Board were Edward G. McGuire, Lois H. North and Joseph W. Tovar, presiding. Also present was the Board’s legal intern, Brian Norkus. Representing DVNPC was Steve Fredrickson. Representing the County was Cheryl D. Carlson. Court reporting services were provided by Jeanne Ericksen of Robert H. Lewis and Associates of Tacoma, Washington.

## **II. Findings of Fact**

1. On February 2, 1996, staff for the County Executive mailed notice of proposed Ordinance

96-118 to approximately “7,000 people.” Ex. 19, Declaration of Kamuron Gurol.

2. Also on February 2, 1996, the County published notice of a public hearing on the adoption of proposed Ordinance 96-118 in the *Seattle Times*. Ex. 18, Declaration of Janet Masuo, Attachment A.

3. On February 14, 1996, the County Council’s Growth Management, Housing and Environment Committee (**GMH&E**) held a public meeting on Proposed Ordinance 96-118. Tim O’Brian testified on behalf of DVNPC. *Buckles* FDO, Finding of Fact 20.

4. On February 26, 1996, the Council as a whole held a public hearing on Proposed Ordinance 96-118. Tim O’Brian and Penni Cocking testified on behalf of DVNPC. *Buckles* FDO, Finding of Fact 22.

5. On February 29, 1996, Councilmember Ron Sims held a “South Park Community Meeting” in South Park. Notice of this meeting was sent to all addresses in the 98168 and 98101 zip codes. Ex. 20, Declaration of Caroline Whalen, Attachment D.

6. On March 11, 1996, the Council passed Ordinance 12170 [a/k/a Ordinance 96-118], including Amendments 15 and 16-1. Amendment 15 amended the Plan by applying “Industrial” land use designation to the Spencer Properties; amendment 16-1 amended the zoning map by applying residential R-4 and potential industrial P-I to the Spencer Properties. Ex. 22, Ordinance 12170.

### **III. APPLICABLE LAW**

#### **A. Standard of Review/Burden of Proof**

Pursuant to RCW 36.70A.320, comprehensive plans and development regulations, and amendments thereto, adopted pursuant to the Act, are **presumed valid** upon adoption. The **burden is on the Petitioner** to demonstrate that any action taken by the respondent jurisdiction is not in compliance with the Act.

The Board “shall find compliance with the Act, unless it determines that the [County’s] action[s] are] **clearly erroneous** in view of the entire record before the Board and in light of the goals and requirements of the [GMA].” RCW 36.70A.320 (3). For the Board to find the County’s actions clearly erroneous, the Board must be “left with the firm and definite conviction that a mistake has been made.” *Dep’t of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

#### **B. Noncompliance and Invalidity**

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, or at an earlier time upon the motion of a . . . county or city subject to a determination of invalidity under RCW 36.70A.300 [now RCW 36.70A.302], 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. . . .

...

The board shall schedule additional hearings as appropriate pursuant to subsections (1) and (2) of this section.

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.

#### **IV. PRESENTATION OF ISSUE TO BE DETERMINED AND DISCUSSION**

##### **A. Legal Issue to be Determined**

The legal issue to be determined by the Board in this proceeding was set forth in the PRHO as follows:

*Did the County, in adoption of the Spencer Amendments, fail to comply with RCW*

RCW 36.70A.140 provides:

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. In enacting legislation in response to the board's decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board's order. Errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed.

### **B. Pleadings of the Parties**

Petitioner complains that the County only used two methods of notice and that both were insufficient. DVNPC argues that the published newspaper notice was not specific enough to apprise the public of the location of the proposed action:

One newspaper notice was published. That notice identified this proposed action only as a “Specific Land Use Map & Zoning Changes . . . Spencer Industrial.” The notice did not include an address of the Spencer property nor even identify a general area of the County where the property was located. DVNPC Brief, at 6.

Petitioner complains that the published notice described not just the Spencer Industries property, but numerous proposed comprehensive plan amendments at sites scattered across the County. DVNPC Brief, at 13. Petitioner argues:

Given that the public notice was describing a list of actions throughout the County, a reader would have no idea where the “Spencer Industries” site was located. It could be anywhere in the County. South Park residents unfamiliar with the 0.9-acre site by the name “Spencer Industries” were given no indication that the residences on the site were being considered for demolition and conversion to heavy industrial uses. *Id.*

DVNPC contends that the County's mailed notice suffered from some of the same defects that it identified in the published notice. Although the mailed notice included a map and narrative for the "Spencer Properties" that was lacking in the published notice, Petitioner characterized both notices as giving "obscure reference to the Spencer proposal." *Id.* The main portion of DVNPC's attack on the adequacy of the mailed notice focuses on the sufficiency of its distribution. Petitioner cites its rebuttal evidence, and argues:

. . . the County's assertion that it mailed to all property owners within 500 feet of the Spencer property is demonstrably false. The DVNPC compared the County's Affidavit of Mailing with the Assessor's identification of property owners within 500 feet of the Spencer site. The comparison demonstrated that of 67 identified residential property owners within 500 feet, only two were mailed notice by the County. DVNPC Brief, at 13, footnote omitted.

The County responds that it gave sufficient notice of the Council's actions to comply with the Act's public participation requirements. The County points to its notices and public hearings:

The County scheduled a February 26, 1996 public hearing for the comprehensive plan and zoning package at issue herein. On February 2, 1996, the County mailed notice to over 7,000 residents within King County to notify them of the proposed changes . . . [and] also published in the *Seattle Times* a notice regarding the plan and zoning package . . . County Brief, at 14.

The County cites the Declaration of Kamuron Gurol as evidence that its mailed notice went to people who should have received it. It also argues that Petitioner had effective notice by virtue of the fact that representatives of DVNPC gave testimony at County hearings prior to the adoption of Ordinance 12170:

Mr. O'Brian and Ms. Cocking testified at Council hearings to discuss the comprehensive plan and zoning changes. Mr. O'Brian testified at the February 14, 1996 [hearing] . . . [b]oth Mr. O'Brian and Ms. Cocking testified on February 26, 1996 at the full King County Council hearing on the proposed Ordinance . . . County's Brief, at 15.

The County also argues that because the challenged action was a legislative action, it is inappropriate for the Board to interpret the GMA in such a manner as to require quasi-judicial notice, such as posting the site or even mailing to property owners/residents within the immediate vicinity. County's Brief, at 16-17. As to any defects in its published notice, the County cites the portion of RCW 36.70A.140 that "errors in exact compliance" shall not render an action invalid

provide that “the spirit of the procedures is observed.” County’s Brief, at 19.

The County contends that the rebuttal exhibit is unpersuasive, arguing that it is not one upon which reasonably prudent people would rely. County’s Brief, at 21. It argues that the County’s declarations are “inherently reliable” and are entitled to a presumption of validity. *Id.*

DVNPC replies that the Board need not resolve the question of whether the County’s action was ‘legislative’ or ‘quasi-judicial.’ Rather, the question before the Board is whether the County’s action complies with the public participation requirements of RCW 36.70A.140. DVNPC’s Reply, at 5. Petitioner reiterates its complaint that both the published and the ‘mailed’ notices were inadequate and disputes the County’s argument that the Board should assign greater weight to the County’s declarations than to the rebuttal evidence simply because the former is sworn under oath. DVNPC’s Reply, at 10-11.

### C. Analysis and Discussion

The Court of Appeals directed the Board to admit DVNPC’s rebuttal evidence, stating:

Because the rebuttal document raised a potential question as to the efficacy of the County’s mailing, the Board should have admitted the document or explained its refusal to do so. This is particularly true because, aside from the inadequate notice published on one occasion in the *Seattle Times*, the mailed notice was the only other means by which the County attempted to give notice of the public hearing on the proposed amendment. *Duwamish Valley Neighborhood Preservation Association v. Central Puget Sound Growth Management Hearings Board*, Wash. App. (1999), (emphasis added).

As framed by the above quoted Court directions, the question before the Board is whether the “efficacy” (i.e., the effectiveness) of the County’s mailed notice satisfied the requirements of RCW 36.70A.140. In so doing, the Board weighs the only evidence at hand: DVNPC’s rebuttal evidence and the Declarations of the three County employees offered by the Respondent. If the Board determines that the mailed notice was not effective, then it must find that the County’s action was clearly erroneous and noncompliant with RCW 36.70A.140. The Board would then proceed to determine whether the invalidity requested by Petitioner is warranted pursuant to RCW 36.70A.302.

In the event of a remand, the County would have to comply with the GMA’s specific notice requirements found at RCW 36.70A.035.<sup>[1]</sup> However, because this provision does not apply to actions that predate July 27, 1997, the Board is not measuring the challenged action directly against the requirements of this section.

The Board agrees with the County that the challenged action was a legislative matter, rather than a quasi-judicial matter. However, even a legislative matter is subject to the requirement for ‘effective notice.’ Although not controlling here, RCW 36.70A.035 is instructive. The very first of the examples listed as “reasonable” notice is “posting the site for site-specific proposals.” Simply because posting is a common practice for quasi-judicial actions does not mean that it will never be appropriate for a legislative action. Even so, the Board does not conclude that the County had an obligation to ‘post the site’ as DVNPC argues, provided that it took other steps to provide ‘effective notice’ to the public.

The Board also agrees with the County that DVNPC had ‘actual notice’ as evidenced by the record. Nevertheless, the ‘public’ is a larger group than an individual citizen or neighborhood organization. There is no dispute that DVNPC has standing to file a PFR in this case, and the Act requires only that it identify GMA provisions with which it contends the local government has not complied. This it has done. The matter of the ‘effectiveness’ of the County’s notice is squarely before the Board. <sup>[2]</sup>

The Board is directed to accord deference to the choices and actions of the legislative bodies adopting GMA documents. RCW 36.70A.3201. There is no similar direction regarding the deference owed to the staff work provided precedent to the exercise of legislative discretion. Because the very correctness of the Gurol Declaration is at issue, the Board is compelled to scrutinize the rebuttal evidence and then render a judgment.

The Declaration of Kamuron Gurol provides, in relevant part:

3. The notice of public hearing was mailed on or about February 2, 1995 to approximately 7,000 property owners whose land may be potentially affected by the proposed changes, owners of properties within a 500-foot radius of parcels recommended for rezoning by the proposed actions, and parties of record whose appeals before the Central Puget Sound Growth Management Hearings Board resulted in the proposed action as follows:

....

d. For the four specific land use map and zoning changes [including the Spencer site], notice was mailed to property owners within 500 feet of the subject parcels and for Ring Hill Estates, Eastgate Congregational Church and the Spencer site, to parties of record from previous hearings/mailings; . . . Ex. 19, at 2-3 (emphasis added).

In reviewing the Declaration of Kamuron Gurol, the Board concludes that the map and the narrative of the mailed notice were sufficient to provide reasonable notice to anyone who received it. The question then becomes one of the sufficiency of the mailing itself. Looking at

the words in the Declaration, the Board sees two possible interpretations of the County's intentions. Either the County meant to mail this notice to all property owners within 500 feet of the site **or** the County meant to mail this notice only to interested parties within 500 feet of the site. Significantly, in either event, the County's mailed notice was insufficient.

If the Gurol Declaration meant that the mailed notice was sent to *all* property owners within 500 feet, the Board is persuaded by the rebuttal evidence that the County substantially missed the intended target. Attached to DVNPC's rebuttal evidence is a two-page photocopy of mailing labels with the following handwritten notation: "4/15/96 This is a copy of the labels used for the remand notice mailing." DVNPC asserts that the signature following the handwritten notation is "Kamuron Gurol" and that these addresses were the ones the County used to distribute the mailed notice referenced in the Declaration of Kamuron Gurol. The County did not contest these assertions.

In reviewing the photocopy of the mailing labels, several facts are telling. There are forty-seven names listed. Of these, seven are county staff or consultants, one is an elected official and one is the director of a community health center. Even if every one of the remaining thirty-six names represent property owners within 500 feet of the Spencer property (a proposition that DVNPC pointedly disputes) this is still only about half of the total properties that the rebuttal evidence suggests fall within 500 feet. This is simply too large a discrepancy to be excused by the "errors in exact compliance" language of .140.

Alternatively, if the Gurol Declaration meant that the mailed notice was sent only to a subset of "interested citizens" then the County committed the fundamental and fatal error of picking too small and exclusive a target. The Board understands that in the evolution of legislative amendments to plans and regulations, it is a common and commendable practice to compile and utilize distribution lists of interested individuals and groups, either by issue or by site. However, in this case with these facts, this type of notice alone is insufficient to satisfy the requirements of RCW 36.70A.140. It is contrary to the spirit and substance of .140 for local government to provide effective notice of a proposed GMA action to only those property owners whom it deems are "interested" by dint of having made some prior comment or their membership in a neighborhood association. Significantly, the ineffectiveness of the County's mailed notice would not have been fatal to the County's .140 compliance if the County had also employed another effective form of notice (e.g. publishing in the newspaper or posting the site with an accurate notice, including sufficient locational and topical information).

#### **IV. CONCLUSIONS OF LAW**

The Board concludes that the County's mailed notice was not effective in alerting the members of the general public and those members of the public who reside and own property in the

immediate vicinity of the Spencer properties. The County's failure to provide effective mailed notice regarding the adoption of the Duwamish portion of Ordinance 12170 was **clearly erroneous** and **failed to comply** with the public participation requirements of RCW 36.70A.140.

## V. 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 the County's action with regard to the Duwamish portion (i.e., the Spencer Property portion) of Ordinance 12170 does not comply with the requirements of RCW 36.70A.140.

The Board is not persuaded that the continued validity of Ordinance 12170 during the period of remand will substantially interfere with RCW 36.70A.020(11). The Board reaches this conclusion for several reasons. First, it has been over five years since these actions were first challenged and the record and argument before the Board has been absolutely devoid of any indication that a permit application is imminent. Second, the Board is giving the County a very short period of time to comply with the remand. Third, the Board has never held that the County's action failed to substantively comply with any of the GMA's requirements. Fourth, the Board sees no evidence in the record that suggests that the County's error was willful or that it has or will act in bad faith.

## vI. NOTICE OF COMPLIANCE HEARING

Pursuant to RCW 36.70A.330, the Board may schedule additional compliance hearings as it deems appropriate. Because the Board has identified clear error in the County's mailed notice, it has concluded that the requirements of RCW 36.70A.140 have not been satisfied. It has remanded Ordinance 12170 to the County with direction that the County conducts appropriate public participation, including notice.

Pursuant to RCW 36.70A.330(5), the Board schedules an additional compliance hearing in this matter for **10:00 a.m. on Thursday, July 19, 2001**. The scope of the compliance hearing is the County's compliance with RCW 36.70A.140 as interpreted by the Board in this Order.

## VII. Order

Based upon the above referenced documents, the argument and briefing prepared by the parties, the Findings of Fact and Conclusions of Law set forth herein, the Board ORDERS:

1. The Board enters a **finding of noncompliance** for Ordinance 12170 as it applies to the

Spencer property.

2. The Board establishes **4:00 p.m. on Monday, July 2, 2001** as the compliance deadline for the County to achieve compliance with RCW 36.70A.140 as interpreted by the Board in this Order.
3. The Board schedules a **Second Compliance Hearing** in this matter for **10:00 a.m. on Thursday, July 19, 2001**. The Second Compliance Hearing will be held in Suite 1022 of the Financial Center, 1215 Fourth Avenue, in Seattle. The scope of the Second Compliance Hearing is the County's compliance with RCW 36.70A.140 as interpreted by the Board in this Order.
4. By **Monday, July 9, 2001, at 4:00 p.m.**, the County shall submit to the Board, with a copy to DVNPC, an original and four copies of its Second Statement of Actions Taken to Comply (the **County's Second Statement**).
5. By **Monday, July 16, 2001, at 4:00 p.m.**, Petitioner DVNPRC shall submit to the Board, with a copy to the County, an original and four copies of any Response to the County's Second Statement of Actions.

So ORDERED this 19th day of April, 2001

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

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Edward G. McGuire, AICP  
Board Member

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Lois H. North  
Board Member

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Joseph W. Tovar, AICP  
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration.

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[1]

RCW 36.70A.035 provides:

(1) The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulation. Examples of reasonable notice provisions include:

(a) Posting the property for site-specific proposals;

(b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located or that will be affected by the proposal;

(c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;

(d) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and

(e) Publishing notice in agency newsletters or sending notice to agency mailing lists, including general lists or lists for specific proposals or subject areas.

. . . .

(3) This section is prospective in effect and does not apply to a comprehensive plan, development regulation, or amendment adopted before July 27, 1997 (emphasis added).

[2]

The Board also notes that the County's argument would have made the Court of Appeals remand superfluous. The Court, having reviewed the record before it, was aware of these same facts to which the County now points, namely, that DVNPC had actual notice.